

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE: ISO REVIEW OF VARIOUS INVESTIGATIONS

STATE CAPITOL
ROOM 2040
SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 21, 2003

10:43 A.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair

SENATOR WILLIAM MORROW, Vice Chair

SENATOR BETTY KARNETTE

SENATOR SHEILA KUEHL

SENATOR BYRON SHER

MEMBERS ABSENT

SENATOR DEBRA BOWEN

SENATOR WES CHESBRO

SENATOR MARTHA ESCUTIA

STAFF PRESENT

LARRY DRIVON, Special Counsel to Committee

BOB PRATT, Legislative Counsel

CHRIS SCHNEIDER, Investigative Consultant

SCOTT CHAVEZ, Consultant to SENATOR MORROW

WADE TEASDALE, Chief of Staff, SENATOR MORROW

ALSO PRESENT

ERIC HILDEBRANDT, Ph.D., Manager
Department of Market Analysis
California ISO

CHARLES F. ROBINSON, Vice President and General Counsel
California ISO

JOHN POWERS, Principal Consultant
McCullough Research

TRACY BIBB, Director of Scheduling
California ISO

JIM DETMERS, Vice President of Grid Operations
California ISO

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01 P-R-O-C-E-E-D-I-N-G-S

02 --ooOoo--

03 CHAIRMAN DUNN: Good morning everybody. While
04 I'm giving some introductory procedural comments, Eric, you may
05 want to wander up get and get settled in here.

06 Happy New Year to everybody. I don't think it's
07 too late into January yet to be saying that.

08 As the old saying goes, I've had numerous
09 questions over the past two weeks, and let me just say, the
10 rumors of our demise are greatly exaggerated, I'm sure to
11 Charlie's great dismay.

12 Let me just clarify, because I know some folks
13 still have questions about what Rules Committee did two weeks
14 ago. The life of this Committee was extended to March 31st.

15 That is basically how we've been doing this, is
16 that Rules has extended us to a certain date, and when that
17 certain date rolls around, reviews whether it wishes to continue
18 the existence of the Investigation Committee. And that new date
19 is March 31st. Rules Committee did say that it would like to
20 see us wrap up our work as soon as we could, with the hope being
21 March 31st. But, of course, we'll revisit the issue at that
22 time.

23 As stated to many representatives from the media
24 that have called, we've got a few loose ends we want to tie up,
25 one or two larger areas we'd like to probe into, but obviously
26 with an investigation into this complex area, we could have five
27 more years and not cover everything that needs to be covered.
28 So, we're going to do our best to prioritize and target that

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01 March 31st deadline.

02 I did make mention at the Rules Committee
03 hearing, as some may have heard or read in the press, that if we
04 still have a little work left to do by March 31st, and Rules
05 Committee would prefer us not to go beyond March 31st, we may
06 seek the permission of the Chair of Energy Committee, Senator
07 Debra Bowen, to create a subcommittee of her Energy Committee to
08 do the last little bit of work that may extend beyond March
09 31st. But stay tuned. We'll keep everybody posted on that.

10 I also want to note that a bill was put across
11 the desk this morning, because I know I'm going to get a lot of
12 questions on it, so let's just deal with it right out of the
13 box. It's what I'm referring as the California De-ISO bill.
14 The bill is only a spot bill, and it relates, of course, to the
15 ongoing litigation over the governance of the Cal-ISO. That
16 bill is there for a vehicle, depending upon the outcome of that
17 governance dispute that is now in litigation. I have no idea
18 what the timing of that is. Charlie, you may have a better read
19 on it; you may have no idea what the timing is as well. Slow
20 process. So, that is out there as well, too.

21 Procedurally, I think that's it. Senator Kuehl,
22 I know you've got a limited time. Any comments you wish to make
23 as we roll into another year of our investigation?

24 There's several issues we intend to cover this
25 morning. We're going to do it as quickly as possible. I know
26 I've always said that, and Evelyn always looks at me, but we
27 have a built-in deadline and that is 1:30. We've got both
28 caucus meetings and Floor Session, et cetera, so that we really

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01 are going to have a difficult time going beyond that point. So,
02 we'll try to get through it as quickly as possible.

03 I think the hearing agenda is out there. Three
04 main areas, and then some minor wrap up areas. The three main
05 areas are -- Eric is here to discuss a recent report that's been
06 discussed between the Committee and Cal-ISO.

07 Second, what we refer to as the C66 issue. Some
08 of you may be familiar with it. I'll leave it to when we get to
09 that to go into what that's all about for those who are
10 unfamiliar.

11 Then third, some discussion regarding the
12 fictitious load incidents, which isn't really new news. It's
13 been publicly discussed in the past, but we want to cover it
14 some.

15 Items Four and Five are more wrap-up or update
16 issues relating to Perot Systems and Taipower. There was some
17 publicity on this one. We've asked Charlie, if time permits, to
18 update us where we sit on the Perot Systems-Taipower situation.

19 And then lastly, the MD02 up date, and a few
20 issues relating to that. I know CMUA is, if we have the time
21 permitting, I'm going to invite to make some comments on that as
22 well as others.

23 So, without anything further, we're going to get
24 going because I don't anticipate that we're going to have any
25 votes today. I don't think we'll have to vote on contempt on
26 Eric or Charlie, or anybody else here. So, I think we're going
27 to go, even though we do not have a quorum at this point in
28 time.

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01 Let's go forward. Eric, if you would. I think
02 everybody in the audience knows, but obviously the introduction,
03 we're going to have to swear you in, as we do with all of them,
04 and then let's roll right into the presentation of your report.

05 [Thereupon the witness,

06 ERIC HILDEBRANDT, swore to tell
07 the truth, the whole truth, and
08 nothing but the truth.]

09 CHAIRMAN DUNN: If you would, Eric.

10 DR. HILDEBRANDT: Good morning, Senator. Thank
11 you again for the opportunity to appear once again before the
12 Committee and review some of the work I've done pertinent to
13 your investigation. Certainly happy to review that work and
14 entertain any other questions you may have about that.

15 My understanding is that primarily you're
16 interested in an October 4th report that was released by the ISO
17 and provided to various legal and regulatory entities in which
18 we examined the potential impacts and magnitude of the various
19 strategies outlined in the Enron memos released last spring.

20 The purpose of the report was really two-fold.
21 First, ISO management, a lot of external entities, clearly when
22 the Enron memos came out, wanted an assessment of the degree to
23 which these were exercised: Was it only Enron? Were there
24 other participants potentially involved in these?

25 So, the first objective was to assess the
26 potential magnitude in terms of impact and scope of the
27 strategies.

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28 The second objective, clearly in my mind, was in
01 the course of doing that analysis, I would be developing lists
02 of transaction or schedule-specific information that might be
03 used by various entities that we were working with and would
04 continue to work with who are investigating the Enron
05 strategies.

06 So, those were the two purposes of the report.
07 Because, again, the objective was to assess the potential
08 magnitude and provide leads, so to speak, or flag transactions
09 that might be further investigated, the report casts a broad
10 net, clearly, in terms of looking at the Enron strategies,
11 identifying how that would appear in ISO records, and then
12 proceeding to flag all the records that kind of meet those
13 criteria and kind of trigger a flag, which suggests, well they

could be involved in one of the Enron strategies.

So again, the report casts a broad net, and that's consistent with, you know, wanting to try to capture the upper bound of some of these and provide a starting point for further analysis.

I guess I would note as a global comment, in going through each of the strategies, I think in every case it turned out we, the ISO, didn't have the entire, you know, the complete set of information that would be necessary for me to draw a conclusion as to whether specific transactions, you know, were indeed the result of Enron strategies and the strategies outlined in those memos. So again, that was another reason for emphasizing the need for further investigation.

Let's see, I could go through each individual one, but I think that's kind of the global methodology, taking

them one by one, assessing the magnitude as well as the data underlying them.

I guess I would emphasize, you know, when you look in terms of results, we did come up, I think, with tens of millions of dollars in terms of potential impacts.

I would emphasize, however, that, you know, while we intentionally cast a broad net, we don't know what we don't know. A lot of the strategies involve -- appear, based on the Enron memos, intentional misinformation or scheduling to hide, you know, the strategy being undertaken. So, we don't know what we don't know.

So again as a caveat, clearly we don't know to the extent the same strategies were employed but don't show up in the ISO data, or only in other records we don't have access to. I certainly don't want to discourage investigation of that. In fact, it's our understanding -- and we're working with various entities, looking at all the different sources of information, typically or most notably, information from the suppliers themselves.

CHAIRMAN DUNN: Can I interrupt for one second.

One of the statements you made, difficult to research these issues as times because of, I believe you used the words, deliberate misinformation efforts by certain market participants to try to cover the behavior.

Can you give us some examples of that kind of misinformation or attempt to cover the behavior?

DR. HILDEBRANDT: Well, attempt to cover may not be the proper word, just going down the list.

If somebody -- going down the list, if somebody overschedules load, you know, you can't always tell the degree to which that's intentional versus unintentional. One can make some assumptions. We don't have evidence of intent, except perhaps the degree of overscheduling.

I think a big one is, you know, to the extent resources schedules, whether it's a counter-flow schedule or an ancillary service schedule, was submitted and could not have been backed by an actual resource, we don't know that. So, that would be one, one instance there.

Or another instance would be to the extent schedules and resources were not physically available, we have no way after the fact particularly to go back and determine that.

I think, again, and some of the -- for instance, the Death Star strategy, clearly, if that's -- whether intentional or not, whether it's employed under different schedule coordinator IDs, that becomes difficult, if not impossible, for us to match up and link with certainty.

CHAIRMAN DUNN: Okay.

21 Mr. Drivon.
 22 MR. DRIVON: Thank you.
 23 Dr. Hildebrandt, to what extent, if at all, do
 24 the confidentiality requirements of tariffs interfere with your
 25 ability to gather data as may be represented in areas outside
 26 the ISO control area?
 27 For instance, on Page Five of the Yoder-Hall
 28 memoranda, Enron talks about how it may be difficult for the ISO
 0008 to understand what's going on because you can only see half the
 01 picture. Certain of these tariffs, as I understand it, require
 02 and mandate confidentiality with respect to certain data.
 03 I wondered whether that might have an impact on
 04 your ability to see the picture in real time?
 05 DR. HILDEBRANDT: Information that we don't
 06 normally collect, I think the bigger barrier is not -- or I
 07 haven't considered the confidentiality of the data that other
 08 entities, data filed with other entities.
 09 I would just note, the biggest barrier for the
 10 ISO is, we don't have subpoena power. We have the ability to
 11 request information currently, but -- and we've done that in
 12 various instances, but in the end, it's -- FERC has not enforced
 13 or taken any action. You know, our ability to request
 14 information is only as strong as FERC's willingness to back us
 15 up, and they haven't done that.
 16 So, I think the biggest barrier is, again, we
 17 can't subpoena entities. They typically would not or have not
 18 been responsive, you know, voluntarily.
 19 And I guess I can't address to the extent which
 20 they may be limited in providing us information because of
 21 various confidentiality agreements.
 22 MR. DRIVON: Well, do you believe, for instance,
 23 that more transparency in the market across control areas might
 24 help your effort in understanding what's going on and being able
 25 to pick these issues up in real time?
 26 DR. HILDEBRANDT: They would help our ability as
 27 well as other entities' abilities to do that, yes.
 0009 MR. DRIVON: So, to the extent that the
 01 information is obscure, it aids someone other than the control
 02 operator in whatever area they're in. Would that be a fair
 03 statement?
 04 DR. HILDEBRANDT: Well, certainly it hinders the
 05 control operator. In theory I guess it could help facilitate
 06 the various games.
 07 MR. DRIVON: In practice, Enron was saying
 08 internally that one of the reasons they could get by with
 09 certain of those congestion games they were playing was because
 10 there was a lack of transparency in the market. You could only
 11 see part of it.
 12 So, how do we fix that?
 13 DR. HILDEBRANDT: Well, clearly one thing that
 14 would help is the one you mentioned, more transparency on a
 15 regional scale of entities which could then be, you know,
 16 observed or monitored by the various entities responsible for
 17 that.
 18 MR. ROBINSON: My name is Charles Robinson. I'm
 19 Vice President and General Counsel on the California ISO.
 20 Your question, I think, began with questions
 21 about the confidentiality provisions of the ISO tariff. And I
 22 did want to make sure that Eric's response was clear, that what
 23 he was saying was, there was a lack of information with respect
 24 to control areas outside of the ISO, and so to some extent, your
 25 question about transparency relates to transparency across an
 26 entire regional market, not simply the ISO market.
 27

MR. DRIVON: I have a general concern with

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01 confidentiality, as you know. There have been a lot of
02 instances in the last nearly two years that I've been here with
03 the Committee where confidentiality as urged by various
04 entities, not certainly limited to the ISO but not excluding
05 them either, have made it more difficult for a lot of us to
06 understand what's going on.

07 And that's confidentiality from market
08 participants, from other control -- for instance, what about a
09 requirement that -- let's just be specific, LADWP share
10 information with the ISO; the ISO share information with LADWP.
11 Everybody share information with other control areas.

12 And by the way, when we're trying to understand
13 what's going on, you know, it's helpful when we get information,
14 if we can share it with other people who can help us understand
15 it.

16 So, I think what I'm trying to point out is that
17 there is a general problem from my perspective, at least, as an
18 investigator in this thing, with respect to the level of
19 obscurity in the entire market, starting from the FERC and going
20 all the way to the bottom of it.

21 And I personally believe that that, together with
22 the interpretations of confidentiality requirements that have
23 been made by entities such as the ISO, have made things a lot
24 more difficult and allowed gaming to continue longer than it
25 needed to if all of the information had been out there and
26 everybody had been able to point fingers at everybody else with
27 information.

MR. ROBINSON: I would agree with the general

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01 thrust of your comments. Some of those issues are being
02 addressed. For example, in our Oversight and Investigation
03 Program, that is going to the Board later this week.

04 Part of our effort is to make sure that we push
05 information out, and we share it with oversight and
06 investigative agencies on a more real-time basis.

07 In addition to that, there is substantial
08 activity going on currently regionally to develop market
09 monitoring programs on a regional basis.

10 So, I agree with the general thrust of your
11 comments, and there are activities underway to address the
12 concerns that you've raised.

13 MR. DRIVON: And I applaud the fact that are
14 activities underway.

15 My question would be whether it was a management
16 decision that caused these activities to have been delayed for
17 nearly two years?

18 I mean, we've known about the problems with
19 respect to obscurity in the market for a long time, even before
20 this Committee got started. There were a lot of people that
21 were screaming about the fact that there wasn't enough
22 transparency to the market.

23 So why is it that you are now getting around to
24 the place of addressing that from a management perspective?

25 CHAIRMAN DUNN: It may have been rhetorical,
26 Charlie. I'll leave it up to you, if you want to answer it.

MR. ROBINSON: Why don't we proceed.

CHAIRMAN DUNN: Eric, a couple questions.

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01 First of all, you were doing a general overview
02 and I interrupted you initially. Why don't you finish that.

03 DR. HILDEBRANDT: Yeah, I guess I did a general
04 overview. I was kind of summing up some of the results really.

05 Then I'm willing to go, at the pleasure of the

Committee, I can go through individually each of them.

But should we not do that, just in terms of summing up, again, I guess I couldn't emphasize enough that we don't know what we don't know. We don't want to discourage other investigations. In fact, that was one of the key purposes of the report, was to provide if not starting point, at least a valuable resource that we could use to contribute to the investigations going on.

I continue to devote a significant amount of my time to assisting the entities involved in different investigations and will continue to do that.

So, I guess that would be summation. I could go through the strategies one by one, or perhaps do that through questions.

CHAIRMAN DUNN: Probably we'll touch upon it in questions.

Eric, I want to make sure I understand, because I know that Chris has been doing most of the handling of putting the procedural aspects of today together.

Your report now of October 4th, '02, while initially confidential, I believe confidentiality has been waived now.

Is that correct, Charlie?

MR. ROBINSON: That's correct.

CHAIRMAN DUNN: So now available to the public at large?

MR. ROBINSON: That's right.

CHAIRMAN DUNN: Do you remember approximately when it was made available to the public at large? Just a rough guess. I'm not trying to pin you on a date.

MR. ROBINSON: The Monday -- rough guess is Monday, January 6th or 7th.

DR. HILDEBRANDT: The 7th.

CHAIRMAN DUNN: Eric, when did you first start working to put this report together, again, rough approximation?

DR. HILDEBRANDT: Well, various parts of it as soon as the Enron memos were released. You know, the immediate questions came down through management, you know, to begin assessing the degree to which these were employed in our markets. So, the spring, certainly the spring.

CHAIRMAN DUNN: Enron was May of last year, I believe, that the memos were released.

DR. HILDEBRANDT: Yeah.

CHAIRMAN DUNN: Or approximately.

DR. HILDEBRANDT: And I should note that, you know, some of the initial results were reported in Terry Winters' testimony before Congress. That was one of the driving -- well, kind of where some of the results began to get released publicly was in his testimony, which he was being asked questions about the degree and magnitude of these different strategies.

We continued to work on those, because a number of these are certainly complex, and we need to juggle sort of this investigation with other activities. We continued on up until October and continued after that point, as we do today.

Another driver, I guess, has been to be able to produce updated results and data for various hearings that are underway. There's three hearings currently at FERC which are investigating manipulation, potential gaming by not only Enron but all other entities. They're basically offshoots of the refund hearings. So, I guess that would be another driver, was to be able to provide some of the data in those proceedings, and again see it be utilized there and combined with other

13 information in that forum.
14 CHAIRMAN DUNN: A couple questions.
15 First, do you consider your findings in here as
16 preliminary, or would you label them more final?
17 DR. HILDEBRANDT: Um, by and large, final in
18 terms of what they are, which is looking at data, casting a
19 broad net, identifying criteria, and flagging transactions that
20 merit further investigation.
21 In terms of the overall investigation, no. I
22 think it's, you know, just begun. And again, the next point or
23 the next step is to combine this with additional information
24 typically, I believe, could only be obtained from suppliers.
25 And typically only in a procedure where they would be compelled
26 to provide that information.
27 CHAIRMAN DUNN: To the extent that Counsel will
28 allow you, can you share with the Committee where you're going
0015 from this point, referring to the October 4th memorandum with
01 respect to further investigation on strategies that were
02 employed in the market, example, the Enron memos?
03 DR. HILDEBRANDT: I think there's -- well,
04 there's three FERC hearings. I would describe the role as
05 assisting, providing data, consultation, et cetera, to any of
06 the entities involved in a regulatory proceeding or legal
07 investigation of any of these strategies.
08 And I think I'm not at liberty to say all the
09 entities, perhaps, that I would provide that assistance and data
10 to. The three FERC ones I can certainly mention.
11 So, I think the next step is to continue to
12 devote a significant amount of my time to providing those
13 entities, providing additional data. To the extent we can do
14 additional analysis to do that, and pass it on to them.
15 CHAIRMAN DUNN: You mention that the work,
16 bringing together the data that's contained in the October 4th
17 report, was commenced shortly after the release of the Enron
18 memos of last year; correct?
19 DR. HILDEBRANDT: Correct.
20 CHAIRMAN DUNN: It's my understanding, Eric, that
21 ISO staff was aware of some of those strategies prior to the
22 Enron memos being made public; correct?
23 DR. HILDEBRANDT: I believe so.
24 CHAIRMAN DUNN: Why didn't ISO commence such an
25 investigation regarding those strategies until after the Enron
26 memos release, if in fact ISO staff knew of the existence of at
27 least some of those strategies beforehand?
0016 DR. HILDEBRANDT: I can't speak to all of the
01 strategies and the extent to which ISO staff, meaning anybody at
02 the ISO -- I work in one department, and so I can't speak to
03 that.
04 Let's see. I'm trying to think of the ones that
05 I'm aware of.
06 I think certainly some of them, the ISO took
07 steps to -- when they were identified, to address it through a
08 market design change.
09 CHAIRMAN DUNN: Let me interrupt right there.
10 Which is something we've talked about, pardon the
11 editorial, ad nauseam over the course of our hearings.
12 But in an attempt to address the identified
13 strategy, ISO never investigated prior to this report the extent
14 of such identified strategies?
15 DR. HILDEBRANDT: I can't make a global comment,
16 and I'm trying to go through them in my mind. Not to my
17 knowledge.
18 CHAIRMAN DUNN: Obviously no surprise to you,
19

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20 Eric, from my perspective that's disconcerting in the sense that
21 understanding that ISO tried to employ, I'll label them counter
22 strategies, when it detected certain behaviors in the market,
23 but at no time until the Enron memos were made publicly
24 available did ISO seek to determine the extent at which certain
25 strategies were being employed in the market?

26 DR. HILDEBRANDT: Well, I'd qualify that, in that
27 a formal -- you know, there's not a formal report on all of
28 these. I think certainly the operations people, or various

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01 folks involved certainly would be able to look at the extent of
02 this informally. There's no formal report written up about any
03 of that.

04 You know, especially during the summer of 2000,
05 it was quite chaotic. People were focused on a number of
06 issues, I think primarily the billion dollar issue, you know,
07 reliability, and the billion dollar issues of market power.

08 So, I think a lot of the work, to the degree in
09 which these were assessed less formally, and that that was
10 factored into the decision of what to do, just simply is not
11 documented or was not retained.

12 CHAIRMAN DUNN: Charlie.

13 MR. ROBINSON: I did want to try to place this in
14 some context.

15 You understand from start up there have been a
16 number of trading strategies, a number of market defects that
17 needed to be addressed. The Enron strategies, as outlined in
18 the memo, received a great deal of attention, but of course
19 they're not the only strategies that the ISO has come across,
20 and they're not the only ones that we've addressed.

21 As Eric has indicated, we've had a very great
22 concern for quite a while about market power, and a considerable
23 amount of attention and resources were devoted to trying to
24 document the exercise of market power to get changes made at
25 FERC with respect to market power and, frankly, to support the
26 refund effort.

27 So, I just want to make sure that there's a
28 context in which people understand how we addressed ten specific

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01 strategies versus, more than likely, hundreds that DMA has come
02 across since 1998, the 48 tariff amendments that we've made to
03 correct various market defects, a tremendous amount of effort
04 around a variety of issues. I didn't want the Committee to lose
05 sight of that context.

06 CHAIRMAN DUNN: Understood, Charlie.

07 A couple quick things here. First of all, I want
08 to, while we've got a little interruption here, welcome Senator
09 Morrow, Senator Karnette, and Senator Sher, as we go back at
10 another year of our investigation.

11 Would it be difficult, either to Charlie or to
12 Eric, for us lay people still trying to understand, for ISO,
13 someone at ISO, to make a list of the strategies that have been
14 identified since the opening of the market that ISO felt it was
15 necessary to respond to? I'm not suggesting it was untold
16 conduct, but just strategies that it detected in the market that
17 it felt it had to respond to.

18 Would that be a difficult task to do?

19 DR. HILDEBRANDT: One, I think to a large extent
20 that's been done. It just depends what level of granularity you
21 want to go down to. And I think the most complete would be
22 Exhibit Two, the Terry Winters testimony. I know a
23 comprehensive effort was made to list all the actions the ISO
24 had taken to the various --

25 CHAIRMAN DUNN: Terry's testimony in D.C.?

26 DR. HILDEBRANDT: Yes.

27 MR. ROBINSON: I think that probably is only part
28 of the picture, though. My recollection is, it didn't contain
0019 every tariff amendment that we engaged in, and virtually every
01 tariff amendment designed to address something that we saw in
02 our market rules or some activity in the market that we believed
03 needed to be addressed.
04 So, I think the testimony that Terry submitted in
05 Washington, together with some sort of comprehensive review of
06 all of our amendments and all the Board documents that went
07 along with the amendments could yield the type of information
08 that you're talking about now.
09 And frankly, I don't know how long an effort or
10 how involved an effort that would be.
11 DR. HILDEBRANDT: If I may comment, if after
12 reviewing the Exhibit Two, additional information is necessary,
13 I assume that could be put together.
14 I would respectfully suggest that to the extent
15 folks like me would need to do that, it would detract resources
16 from ongoing investigations, market design issues, et cetera,
17 and other activities.
18 CHAIRMAN DUNN: We understand.
19 Again, a couple follow-ups here. Your report of
20 October 4th, Eric, where was it first submitted outside the ISO?
21 What non-ISO entity or person was the first to receive your
22 October 4th memo?
23 DR. HILDEBRANDT: I think simultaneously it was
24 provided to your Committee, FERC, the AG, EOB.
25 MR. ROBINSON: The PUC, the US Attorney's Office.
26 CHAIRMAN DUNN: It was shortly after the
27 completion of the report.
0020 MR. ROBINSON: That's my understanding.
01 DR. HILDEBRANDT: More or less simultaneously.
02 CHAIRMAN DUNN: I want to go back, do just a
03 little follow-up on my question of what additional work needs to
04 be done? You mentioned about continuing to work with the three
05 proceedings in front of FERC, et cetera.
06 What else data-wise, knowing you're speaking to
07 lay people here, do you feel you need to come to a thorough
08 understanding, not necessarily of the strategies employed, but
09 the extent of the strategies employed?
10 DR. HILDEBRANDT: I guess data-wise, the way I
11 envisioned proceeding was starting with the list of transactions
12 identified, perhaps using some judgment in identifying those
13 that might be -- you might want -- because of the mass, the
14 tremendous volume of transactions, you may want to, you know,
15 focus on certain transactions or entities. I think asking them
16 to provide specific information about the specific transactions
17 as to the source of the energy, et cetera, the source of the
18 schedule.
19 So, one thing is asking for specific responses to
20 trading and scheduling records, you know, for the days and the
21 markets in which the transactions occurred.
22 I think that has to be combined with depositions
23 of the people involved in those because, again, the information,
24 or that which is supplied, may not -- would only be a piece of
25 the puzzle. So, I think depositions and more general documents,
26 maybe, that don't pertain to a specific transaction, but more
27 general internal company documents that outline trading
0021 strategies, agreements with other entities, et cetera.
01 CHAIRMAN DUNN: Two other areas for me, and I'll
02 then open it up to any other questions from Committee Members.
03 DR. HILDEBRANDT: And just the other comment is,

05 that's tremendously resource intensive. So, I think you're
06 asking what would I do. So, in addition to data, a tremendous
07 amount of resources would be necessary to do that, legal as well
08 as analytical.

09 CHAIRMAN DUNN: Understood.

10 Senator Sher.

11 SENATOR SHER: Mr. Chairman, maybe you discussed
12 this before I came in, but what would be the objective of
13 obtaining that information? Would it be for this Committee?

14 CHAIRMAN DUNN: No, I'm sorry.

15 The question that I posed to Eric was, we had
16 talked earlier about his October 4th memo, which you have in
17 your binders, and whether it was preliminary or final in his
18 perspective. And a little bit of both, I think, was the answer.

19 And I was trying to query what additional work he
20 would like to do to come to more definitive conclusions about
21 the extent of the strategies identified in the market, not
22 suggesting that this Committee necessarily has the wherewithal
23 to be able to do that work. It was really what he intends to do
24 in the future, Senator Sher.

25 DR. HILDEBRANDT: One more comment on that, I
26 guess, would be just procedurally the first step might be, one
27 might be simply to ask every entity, you know, involved in every
28 transaction to respond.

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01 You know, clearly I think -- and maybe perhaps
02 take it from there in terms -- based on the initial responses.
03 Do more targeted investigation based on that.

04 Just a comment. I fully expect that, you know, a
05 great number of entities would be able to explain to everyone's
06 satisfaction as to, you know, that some of the schedules, you
07 know, were not -- didn't involve any of the Enron strategies.

08 CHAIRMAN DUNN: Have you had the opportunity,
09 Eric, to review the interrogatory responses that this Committee
10 got from many other market participants when we followed up the
11 public release of the Enron documents, asking
12 strategy-by-strategy, whether in fact that market participant
13 had engaged in similar behavior?

14 DR. HILDEBRANDT: No, I have not. The responses
15 that I have -- I reviewed most of those submitted to FERC. I
16 believe they did a similar request. I didn't know that any
17 others were publicly available. I did review those submitted to
18 FERC.

19 CHAIRMAN DUNN: I think most of them tracked the
20 responses to FERC. We will provide one to you. They're
21 relatively brief answers. For most of them it's "No, no, no,
22 no, no, no," all the way down the line.

23 My reading of your report suggests that at least
24 from the ISO perspective, those answers may not be correct.

25 DR. HILDEBRANDT: Certainly they merit additional
26 investigation.

27 CHAIRMAN DUNN: A very tactful way of putting
28 that, Eric.

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01 Let me put it in lay terms. From your
02 examination of data, it is your belief at ISO that other market
03 participants did engage in behavior similar to that described in
04 the Enron memos.

05 DR. HILDEBRANDT: Yeah. My personal belief is,
06 yeah. Certainly other participants employed one or more of the
07 strategies.

08 Just a comment on some of the responses. I guess
09 their lawyers did a good job interpreting the questions very,
10 very narrowly, stating they were responding, you know, exactly
11 what was in the Enron memos. I guess in theory --

12 CHAIRMAN DUNN: That's why we put in the word
 13 "similar."
 14 DR. HILDEBRANDT: Yeah. And to the best of their
 15 knowledge, and all that, and so I think by doing that, they, you
 16 know, would -- some of what we identified they would argue is
 17 not, you know, the Enron strategy that they were responding to.
 18 CHAIRMAN DUNN: That's why we're going to enjoy
 19 the hearing when they come and answer why they answered no to
 20 those questions, Eric. I agree with you, that that's probably
 21 what occurred, the lawyers strike again.
 22 One last question. When the document was
 23 completed, October 4th, and you identified generally who
 24 simultaneously received copies of it, including our Committee,
 25 but for public purposes, the document was confidential until
 26 just recently; correct?
 27 And Charlie, I welcome your input here on this.
 28 MR. ROBINSON: Yes, that's correct.

0024 CHAIRMAN DUNN: Why? And before you answer, let
 01 me explain.
 02 The Enron memos, of course, were put on the FERC
 03 website with great fanfare, and a lot of public examination
 04 relating to those issues occurred immediately thereafter and
 05 throughout the summer.
 06 At least from my perspective, Charlie, and
 07 looking at the fact that this report was initially kept
 08 confidential, it's mind-boggling to me that that was done, the
 09 reason ISO kept it confidential.
 10 MR. ROBINSON: Okay. The decision to keep it
 11 confidential was my decision. And when I receive reports of
 12 this type, I determine on a case-by-case basis whether or not we
 13 will publish the report.
 14 I would like to emphasize that the report was not
 15 kept secret. It was given to half a dozen investigative
 16 agencies and twice to this Committee, in October and in December
 17 or January. So, it was not kept secret.
 18 Case-by-case determination, I look at things such
 19 as whether or not we've been able to draw any firm conclusions;
 20 whether or not -- or how comfortable we are with the assumptions
 21 that went into the report; whether there is ongoing litigation;
 22 whether there are ongoing investigations that may be undermined
 23 by the release of the report.
 24 And looking at all of those factors, and given
 25 what I understood from Eric to be in the report and the
 26 objective of the report, I concluded that we should provide it
 27 to the investigative agencies at this time. And again, I need
 0025 to emphasize that what we decided was not to make it publicly
 01 available at that time.
 02 That was not a decision never to make it publicly
 03 available. We decided not to make it available at that time
 04 largely in order to allow additional work to be done by the
 05 investigative agencies.
 06 I think one thing that also needs to be kept in
 07 mind is that to the extent that the report is preliminary, or
 08 conclusions cannot be formed, then information in the report
 09 might undercut or undermine any claims that might be asserted
 10 against suppliers later on.
 11 If, for example, we underestimated the extent of
 12 the Enron strategies, then publishing it, and then later on
 13 coming out with a different set of numbers may very well
 14 undermine claims that investigative authorities or the ISO might
 15 wish to assert against suppliers.
 16 CHAIRMAN DUNN: I'm curious, Charlie. In looking
 17 at Eric's report, it's based upon data from the past that ISO

has within its possession. It's not, at least from my observation, an area subject to depending upon accurate information today from any of the market participants. The information's already there. It's just a matter of the rather large task of examining the data to determine the extent of the strategies.

In addition, when you couple that with knowing that other market participants were responding to both FERC interrogatories and our interrogatories, denying that they engaged in behavior similar to that described in the Enron

memos, that it struck me as odd, including in reviewing the formulas or bases that you identify, how the conclusion could have been drawn to maintain confidentiality from the public at large with respect to this particular document.

MR. ROBINSON: Well --

CHAIRMAN DUNN: Senator Sher.

SENATOR SHER: The introduction to the report talks about submitting this report to commission staff. Which commission is that?

MR. ROBINSON: The Federal Energy Regulatory Commission.

SENATOR SHER: Did they request this report? They requested you to do this?

DR. HILDEBRANDT: We did receive a -- after the Enron memos came out, actually, I think, simultaneously with their interrogatories to all market participants, they issued one at the ISO for any and all work done.

SENATOR SHER: So, this was kind of a self-generated report, not specifically requested by FERC?

DR. HILDEBRANDT: The report, as I explained, was done at the request of management in response to -- for its own information.

We were then asked by FERC to provide any and all information we had done regarding it. So, I considered it --

SENATOR SHER: They didn't ask for confidentiality, FERC, did they?

DR. HILDEBRANDT: I think what we provide to them is typically under confidentiality.

SENATOR SHER: The way the introductory paragraph reads, it appears that this report is being submitted to Commission staff at their -- normally that would be at their request.

DR. HILDEBRANDT: Yeah, it did.

SENATOR SHER: They requested you to do the report.

DR. HILDEBRANDT: They requested us to submit any and all -- again, no, they did not request this --

SENATOR SHER: This is an analysis, as the Chairman says, of the existing data.

But they requested you to analyze that and put it together in this kind of a format?

MR. ROBINSON: Senator Sher, I think what happened was that the analysis was initiated at the request of management, but then FERC requested that we make available to them --

SENATOR SHER: After they knew that you were doing it. So actually, the report was done at the instance of the management of the ISO; is that right?

MR. ROBINSON: The analysis was undertaken at the request of management. The report, the written report --

SENATOR SHER: Management being the Board of ISO?

MR. ROBINSON: Management in this particular instance, I believe, was the CEO and the General Counsel, and

other management.

SENATOR SHER: I'm looking for whether anyone would have requested confidentiality, or was that --

MR. ROBINSON: I can respond to that directly. No one requested confidentiality with this particular report. I looked at the factors that I just described. And given what I knew about what went into the report, which I'd like to describe, my understanding of what Eric did in this report was to try to come up with the outside ballpark figure on what the impact of the Enron strategies might have been.

And the way that he went about doing this was determining under what system conditions someone would have been able to employ these strategies, and then looking at bidding patterns and saying, what bidding patterns might be consistent with an Enron strategy. And then he put a number on it.

So, as he indicated before, he cast a very broad net. And then he indicated, but there's a whole lot of additional work that needs to be done. We don't have subpoena power. We don't have the investigative resources to do this. Let's turn this over to investigative authorities and allow them to proceed from here. Let them use the report essentially as a road map for how they prioritize their investigation and where they go from here.

So on that basis, I concluded let's not publish the report right now. Let's make sure we get the information out to the investigative authorities.

SENATOR SHER: So, the CEO asked that this report be done. The report was done. You saw it, and you made the decision to submit it in the form that it was received but to keep it confidential for the reasons you just stated.

Is that right?

MR. ROBINSON: That's right.

The one correction, as I sit here now, I don't remember whether or not the request came directly from the CEO, whether I thought of it, or someone else in management thought of it. So, I didn't -- I wanted to make that clear. It came from somewhere in management.

CHAIRMAN DUNN: Mr. Drivon.

MR. DRIVON: My question is, you just said that the design of the report was to identify the, I believe you said, outside ballpark of what may have occurred in terms of the impact.

MR. ROBINSON: That's right. That was my understanding at the time.

MR. DRIVON: My question is, how can you determine an outside ballpark when you don't know what the fences are?

For instance, on Page Nine of Dr. Hildebrandt's report, in discussing an analysis of Death Star, he indicates that,

"... a review of a sample of NERC tags indicates that in many if not most cases, there is not sufficient information for the ISO to make this determination"

MR. ROBINSON: That's precisely one of the reasons why I decided that it wouldn't be appropriate -- or I

decided not to release the report publicly at the time, because there was additional information required that needed to be followed up by those who have the authority and the tools to

04 undertake the investigation.

05 MR. DRIVON: Well, if the design of the report
06 was to identify the outside ballpark, and information was not
07 available, then I guess the report didn't meet the criteria of
08 its design.

09 DR. HILDEBRANDT: If I could address that, I
10 think I'm the author of the comments about what the report was
11 designed to do.

12 You know, recall in my summary, I think I
13 emphasized twice, we don't know what we don't know. And I said
14 to the extent -- to the extent we could devise a methodology to
15 use ISO records to identify, flag transactions that would, you
16 know, give an indication of the magnitude of that and would
17 provide a basis for further investigation, we did that. In that
18 sense, the report is conservative, i.e., you know, it casts a
19 broad net.

20 But we don't know what we don't know. Some of
21 these strategies, you know, it's difficult, impossible to just
22 start taking records and identify, you know, those that might be
23 part of the strategy, or what the market impacts were.

24 So, where the report doesn't address something,
25 you know, clearly that's not encompassed in the report. And
26 there's some of these that I think could only be addressed
27 through other information.

28 And then you might, you know, get ten different
0031 economists to assess the impacts. And you'd get probably ten
02 different answers with a range.

03 So, I guess I didn't want to, you know, and that
04 would take a significant amount of time. So I think some
05 basically were not -- were, you know, the limits of analysis
06 were clearly laid out in the report so people could see we
07 weren't drawing conclusions in terms of their -- any dollar
08 impact, et cetera.

09 MR. DRIVON: Actually, I just wanted to be sure
10 that the record got clear on that point. I understood your
11 testimony, but I didn't want to let Counsel's comments go
12 unchallenged, at least somebody pick up the record and say that
13 your report set the outside parameters of the ballpark that was
14 identified. So, I think we all understand where we are on that
15 now.

16 MR. ROBINSON: Well, I think what I meant by
17 that, and again, it's based on my understanding from speaking to
18 Eric, he identified certain system conditions or circumstances
19 under which a strategy of that type could have been employed.

20 So, to that extent, it puts a boundary around the
21 outside impact. In other words, that's what I meant when I said
22 an outside boundary.

23 He looked at system conditions. He looked at
24 bidding patterns. And based on that he was able to say, beyond
25 that, it's unlikely that such a strategy was employed or that
26 revenue would have been derived from one of these strategies.

27 MR. DRIVON: The bottom line is, the report has
28 identified tens of millions of dollars of gains that were gotten
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01 through gaming in these specific sorts of instances. And that's
02 based only on whatever incomplete data there was to support
03 those numbers; correct?

04 DR. HILDEBRANDT: I would just insert, the word
05 potential gains, I think, is used throughout the report. Again,
06 to the extent we cast a broad net, you know, we would identify
07 the potential gains and then, based on further investigation,
08 would determine the portion of those that would be attributable
09 to gaming.

10 MR. DRIVON: Another question on confidentiality.

11 Has there been a review recently of the continuing need to
 12 maintain confidentiality over previously confidential portions
 13 of reports that were written? I have in mind Dr. Sheffrin's
 14 reports that were submitted a year or two ago.
 15 CHAIRMAN DUNN: Who, by the way, is here.
 16 Anjali, good to see you.
 17 She's hiding behind the screen from you, Larry,
 18 in case you're wondering. She's upset that you've now noted her
 19 presence.
 20 MR. DRIVON: I don't know why she would want to
 21 sit behind the screen.
 22 But whether any review of the need for further
 23 maintenance of confidentiality of those sorts of data has been
 24 undertaken, and when we can expect that we can either get that
 25 information or be allowed to release it, to the extent that we
 26 have it.
 27 MR. ROBINSON: I'm trying to recall this. I
 28 believe with respect to that report, they were published, some
 0033 of the results were published in the press.
 02 I don't know the extent to which the report still
 03 being maintained by the ISO as confidential, but I think it's
 04 pretty broadly out in the public domain at this point.
 05 The direct answer to your question about whether
 06 or not we've undertaken a comprehensive review of reports
 07 previously held as confidential to determine whether or not we
 08 should change the designation, the answer is no.
 09 CHAIRMAN DUNN: Eric, I want to ask you the
 10 following.
 11 We touched upon before the fact that this
 12 Committee received sworn answers to interrogatories about
 13 whether other market participants participated in the conduct
 14 described in the Enron memos. I want to touch upon about six of
 15 them very quickly. Yes or no answer to the following question
 16 for each of them.
 17 Based upon your analysis, is it your opinion that
 18 these companies engaged in conduct in the California wholesale
 19 energy market similar to that described in the Enron memos? I
 20 just want to touch upon about five or six of them, AES?
 21 DR. HILDEBRANDT: With all due respect, Senator,
 22 I just -- I wouldn't feel comfortable making conclusions on that
 23 on the record here in the absence of additional information.
 24 CHAIRMAN DUNN: Eric, you've already done it.
 25 It's in your report. You've identified that other market
 26 participants engaged in the Enron conduct.
 27 DR. HILDEBRANDT: If you could draw my attention
 28 to where --
 0034 CHAIRMAN DUNN: Do you disagree, Eric, that
 02 others engaged in conduct similar to the Enron memos?
 03 DR. HILDEBRANDT: Okay, do I think at least some
 04 others, you know, do I think some of these entities and some of
 05 these transactions, I firmly believe that. I can't point -- I
 06 just simply can't point to specific ones and say, at this point,
 07 you know, I think those -- this guy did and this guy didn't.
 08 You know, I think that's a question, you know,
 09 I'm willing to assist in the next steps to do that. I think
 10 other entities have information.
 11 I think in the end, some of these, you know,
 12 certainly some entities, I think, we'll be able to show that
 13 they, you know, engaged in similar practices. Some I think have
 14 basically admitted it in some of their -- they admit, you know,
 15 they explain, sure, we overscheduled loads; sure, we, you know,
 16 sometimes did this or that.
 17 CHAIRMAN DUNN: Not in our interrogatory answers,

18 Eric.
 19 DR. HILDEBRANDT: So, some in the FERC, I
 20 believe, did.
 21 CHAIRMAN DUNN: Let me restate the question. I'm
 22 trying to draw upon my old lawyer skills.
 23 Is it your opinion, Eric, as you sit here today
 24 that you don't know who else in the market may have engaged in
 25 Enron-style activity?
 26 DR. HILDEBRANDT: Um, I would -- I guess I would
 27 suggest, just as a monitor, if you look at some of these, you do
 28 see various entities routinely show up.

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 01 CHAIRMAN DUNN: Who?
 02 DR. HILDEBRANDT: Well, I'll let the readers do
 03 that correlation themselves.
 04 CHAIRMAN DUNN: I think your Counsel was even
 05 uncomfortable with that answer.
 06 MR. ROBINSON: You can assist the Senator to the
 07 extent that you can.
 08 CHAIRMAN DUNN: Counsel, thank you.
 09 I know you don't want to, Eric.
 10 DR. HILDEBRANDT: Yeah, I just -- I don't -- I
 11 don't think I can say that.
 12 MR. ROBINSON: I think his question is, are there
 13 any who routinely show up? I think that's a factual question.
 14 You can probably respond to it.
 15 DR. HILDEBRANDT: Okay, yeah. I mean, I can stop
 16 and go through here, and look at --
 17 MR. DRIVON: For instance, who is Coral Power?
 18 DR. HILDEBRANDT: They're a subsidiary of Shell,
 19 I think. They're a schedule coordinator, marketer.
 20 MR. DRIVON: They show up more than once, I
 21 think.
 22 DR. HILDEBRANDT: Yes.
 23 MR. DRIVON: In fact, they show up approximately
 24 all the time.
 25 DR. HILDEBRANDT: Correct.
 26 MR. DRIVON: At the top.
 27 DR. HILDEBRANDT: Or near, correct.
 28 MR. DRIVON: And they're part of, you think,

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 01 Shell?
 02 DR. HILDEBRANDT: I believe they're a subsidiary
 03 of one of the oil companies.
 04 MR. DRIVON: And do they have generation in
 05 California?
 06 DR. HILDEBRANDT: No, they're a marketer.
 07 MR. DRIVON: Do they have load in California?
 08 DR. HILDEBRANDT: I don't believe so.
 09 MR. DRIVON: So they're traders.
 10 DR. HILDEBRANDT: Traders, t-r-a-d-e-r-s.
 11 MR. DRIVON: There's no "i" in there, or maybe
 12 there is, but not.
 13 DR. HILDEBRANDT: Traders, marketers, actually
 14 akin to Enron. Enron did have some load, but yeah, they're
 15 primarily a marketer. They may have a tiny bit of load. I
 16 don't know. I'm not sure.
 17 MR. DRIVON: Having a tiny bit of load kind of
 18 helps out if you want to do some of these kinds of activities;
 19 doesn't it? I mean, Enron used the fact that it had some load
 20 in California to enable it to create certain schedules, for
 21 instance; right?
 22 DR. HILDEBRANDT: Correct.
 23 MR. DRIVON: And the same thing with Coral?
 24 DR. HILDEBRANDT: Even a marketer can create

25 schedules. It's not necessarily -- you know, they can do NRFC
 26 trades, imports and exports.
 27 MR. DRIVON: And some of the schedules might even
 28 be real.

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 01 DR. HILDEBRANDT: Correct. Oh, yeah, you know,
 02 many -- many of their transactions --
 03 MR. DRIVON: For instance, in Get Shorty, that's
 04 where they were shorting, at least supposedly, shorting
 05 ancillary services, various market participants doing that;
 06 right?
 07 DR. HILDEBRANDT: I believe they show up in the
 08 results for sell back of ancillary services.
 09 MR. DRIVON: And Enron was concerned with respect
 10 to their activities in Get Shorty, in that they were actually
 11 promising to provide ancillary services that they didn't have.
 12 DR. HILDEBRANDT: That is one aspect of Get
 13 Shorty, yes.
 14 MR. DRIVON: So, that's promising to provide
 15 something that they don't really ever intend to provide.
 16 DR. HILDEBRANDT: Correct.
 17 MR. DRIVON: Have you looked into whether or not
 18 that's a violation of the California Penal Code?
 19 DR. HILDEBRANDT: No, I haven't looked into
 20 that. You know, I'm not a lawyer, so I guess I wouldn't trust
 21 my own conclusions as to whether it's a violation of California
 22 Penal Code.
 23 MR. DRIVON: You might have to ask a lawyer about
 24 it.
 25 DR. HILDEBRANDT: I'm interested, yeah. I've
 26 listened to discussions of it.
 27 MR. ROBINSON: We've referred the matter on to
 28 the California Attorney General.

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 01 DR. HILDEBRANDT: If I've provided -- yeah, to
 02 the extent -- I provided as much information I can. You know, I
 03 have asked questions in the context of that, you know, to the
 04 extent that it requires economic input and knowledge of our
 05 markets.
 06 CHAIRMAN DUNN: Senator Sher, did you have a
 07 question?
 08 SENATOR SHER: Well, I was trying to follow your
 09 skillful line of questioning.
 10 I'm still not clear whether you're saying that
 11 you have an opinion, or that you're reluctant to express an
 12 opinion in response to the Chairman's questions.
 13 DR. HILDEBRANDT: Um, I guess my preference, not
 14 to compromise the various investigations that are going on, is
 15 to wait, not to comment on that at this point.
 16 I guess I could just see that creating more --
 17 one, in addition to compromising the other investigations, I
 18 could see that creating an awful lot more work for me that would
 19 directly detract from actual work I could do.
 20 SENATOR SHER: So, you're reluctant to express an
 21 opinion. It's not that you don't have an opinion. You're
 22 reluctant to express it for the reasons you just gave.
 23 DR. HILDEBRANDT: Correct.
 24 CHAIRMAN DUNN: Mr. Schreiber.
 25 MR. SCHREIBER: I'm Chris Schreiber. I'm an
 26 investigator with the Committee. Were the witnesses table
 27 larger, I would be beside you.
 28 I just wanted to give staff perspective, for what

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 01 it's worth.
 02 We -- Dr. Hildebrandt explained earlier that the

03 ISO is limited by a couple of different factors. One is, they
04 don't have data necessarily from other control areas. And two,
05 they don't have all the necessary data from market participants.

06 And just to explain something that we've been
07 doing for the last couple of weeks prior to this hearing, the
08 Committee does have access to data from the LADWP control area.
09 And our consultants undertook an independent analysis of that
10 data, combined with ISO data produced or provided with this
11 report, and identified a number of additional transactions,
12 Death Stars in particular, involving several companies.

13 The one company that had been identified was
14 Powerex. And we had a conversation between the Committee, its
15 consultant, and the traders at Powerex and explained a lot of
16 the questions that arose from what appeared to be Death Star
17 transactions.

18 We had a very helpful conversation with Dr.
19 Hildebrandt again last week, further clarifying some of the
20 questions involved here.

21 From a staff perspective, though, I guess I would
22 only point out that because the information is public and we can
23 discuss this a little bit more openly, we've come to these
24 clarifications a lot more easily than if the data had remained
25 confidential.

26 Just as an example, once the data was -- once the
27 confidentiality was waived, we received commentary from Anaheim,
28 the Anaheim Municipal Utility, and an explanation was undertaken
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01 by Anaheim, and then Dr. Hildebrandt actually furnished an
02 addendum to his report explaining a particular citation of
03 Anaheim in the report. And this is all in the Members' binders.

04 But from a staff perspective, it's been useful
05 and helpful to have Dr. Hildebrandt's input and have the report
06 out there for public consumption, because it's been our
07 experience that the people that he is relying upon to provide
08 the data will never provide it. I mean, in the absence of a
09 subpoena, the data that he awaits won't come.

10 CHAIRMAN DUNN: Other questions from Members?
11 Senator Karnette.

12 SENATOR KARNETTE: I don't know who I'm asking
13 this of. But if you're not going to get the data, what's the
14 problem? Why can't you just make your comment?

15 DR. HILDEBRANDT: I think we have offered to make
16 all the data. Wait, we've offered to make all our data
17 available.

18 I think the data can be obtained, well, through
19 subpoenas and the various discovery that's occurred.

20 SENATOR KARNETTE: Subpoenas, why do we have to
21 go through that? If we're going to get it, we'll get it. But
22 why can't we just get it?

23 CHAIRMAN DUNN: Market participants have it,
24 Senator Karnette.

25 SENATOR KARNETTE: I understand that.

26 CHAIRMAN DUNN: We have found a number don't
27 really want to cooperate very voluntarily.
28 Other questions?

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01 Eric, anything else you wish to add?

02 DR. HILDEBRANDT: I don't think so, no, just that
03 I appreciate the opportunity to go in a little more detail in
04 the report. I think this does illustrate -- just to be on the
05 record, I did -- you know, Charlie mentioned the reasons why
06 this was kept confidential.

07 As an investigator, I did make a pitch for
08 submitting this, keeping this confidential in October because I
09 knew the results are -- you know, we were casting a broad net.

10 They may change somewhat. I think the basic findings were
11 there. You know, I wanted to get them to regulators. You know,
12 there were proceedings, you know, starting.

13 We had discussed work that we had done with
14 various legal entities, and they were anxiously awaiting, you
15 know, results that we could provide them.

16 So, I did make a pitch for that, just as an
17 investigator. From that perspective, it allows you to focus on
18 continuing the investigation.

19 So again, I just appreciate the opportunity,
20 given that this is public, to, I guess, have the opportunity to
21 explain in more detail the context of the analysis, which are,
22 you know, difficult to portray in a written report, et cetera.

23 CHAIRMAN DUNN: My only response, Eric, to your
24 comments, obviously, and this is just me personally speaking
25 here, as we discussed early, which we all agree on, more
26 transparency in the market at virtually every turn is very
27 necessary. I don't think anybody here or the two of you
28 disagree with that at all.

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01 I view the transparency side of it to also
02 applying to much of the investigative work that's done within
03 the ISO. ISO is there -- I know I'm preaching to the choir --
04 to manage the grid for the sake of all Californians. And
05 because these issues touch upon conduct that occurred in the
06 past, and there seems to be little ability to cover one's tracks
07 if a market participant was so inclined, putting the issue out
08 there for all Californians to be aware of, even if preliminary,
09 I think is only healthful, healthy, for the entire environment
10 that we found ourselves operating.

11 But we appreciate your comments as well today.
12 Charlie, anything you want to add?

13 DR. HILDEBRANDT: Sir, and on that, you know, I'm
14 particularly encouraged by the hundred day discovery in the FERC
15 proceedings. It's clearly given access to the widest range
16 of -- California participants have access to all this data and
17 the power to conduct discovery.

18 You know, previous to that, it's been -- it has
19 been limited to legal regulatory entities. But in that case,
20 you know, other entities with resources to bear, you know,
21 consumers in the market, have full access to this information
22 through those hearings. Full access to, you know,
23 investigations the ISO has done, DMA has done, as well as all
24 the market information.

25 So, I think in that respect, they are getting
26 their day in court, albeit on a very short time-frame, but
27 that's encouraging.

28 CHAIRMAN DUNN: Charlie.

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01 MR. ROBINSON: The only thing that I would add is
02 that we do have a program going before our Board this Thursday,
03 a proposal going before our Board. It's our investigation and
04 oversight program, two of the elements of which really go to
05 what you're concerned about; that is, pushing more information
06 out to investigators and regulatory and oversight authorities at
07 the state and federal level, and also making more information
08 available to the public, publishing some more information.

09 CHAIRMAN DUNN: Any last questions on this issue
10 from the dais?

11 Seeing none, why don't we take five minutes to
12 give Evelyn a break, and then we'll roll into the C66 issue.

13 [Thereupon a brief recess
14 was taken.]

15 CHAIRMAN DUNN: John, come up here, get settled
16 in. You're going to be first to bat.

17 Again, I know that everybody has the agenda, or
18 should have the agenda out there. I'm just going to do a little
19 tinkering with it. John Powers is about to be sworn in, as are
20 most of our witnesses.

21 John, correct me if I'm wrong, but it's my
22 understanding that you're actually going to first touch upon
23 kind of a wrap-up issue from Eric Hildebrandt's testimony
24 regarding Death Star; correct?

25 MR. POWERS: That's right, yes.

26 CHAIRMAN DUNN: Once you finish that, which I
27 believe is just a few minutes, I'm going to ask Chris Schreiber
28 to give a little of the background relating to the C66 issue,

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01 not the actual merits of it, but rather the procedural aspects
02 that we've been through over the past few weeks and months
03 relating to getting to the bottom of the C66 issue.

04 But first, Bob, if we can have you do your
05 services.

06 [Thereupon the witness,
07 JOHN POWERS, swore to tell
08 the truth, the whole truth,
09 and nothing but the truth.]

10 CHAIRMAN DUNN: If you could identify yourself.

11 MR. POWERS: My name is John Powers. And I work
12 as a principal consultant with McCullough Research.

13 I want to thank the Committee for having me here
14 today, as my colleague, Robert McCullough, has appeared here
15 before. And we just wanted to give you a little bit of an
16 update on some of the things we've been up to, both on Death
17 Stars and on C66.

18 CHAIRMAN DUNN: John, let's start then and roll
19 right into the update on Death Star, which will dovetail nicely
20 to Eric's comments.

21 For those on the dais, unfortunately we've got a
22 short cord problem, so we can't really turn the television
23 screen so that both the audience and the folks on the dais can
24 see it. So, if those on the dais would like to see the
25 presentation, we do have copies of it coming around. But on the
26 dais, if you'd like to see it, you have to move down there.
27 We're going to let the audience see it live.

28 John.

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01 MR. POWERS: Okay, thanks.

02 Just to dive right into Death Stars, these are
03 one -- Death Stars are one of the Enron schemes that Eric's
04 report did a fine job of rooting out from the data that the ISO
05 has available.

06 We actually, through the efforts of this
07 Committee -- and I again want to thank Christian and Scott
08 Chavez for helping to root out a lot of the data -- we have some
09 data from L.A. specifically that we've been using to identify
10 specific transactions that looked to us like Death Stars.
11 Everybody's got a slightly different definition, so I'll just
12 very quickly say what I think a Death Star is.

13 A scheduling coordinator will file a schedule for
14 a given date and hour such that that scheduling coordinator
15 imports an amount at one tie point on the ISO system, exports a
16 like amount at that same tie point on the L.A. system, and at
17 the same time is exporting at a different tie point on the ISO
18 system, importing at that same second tie point on the L.A.
19 system.

20 So, at the end of the day, although a lot of
21 schedules are being filed, the scheduling coordinator has
22 achieved everyone's dream of being paid to do nothing. So, no
23 power need flow. It's exactly offsetting at two different

24 points, so it's what the ISO has been calling in Eric's report a
25 "circular schedule." And that's an apt name, although not as
26 colorful as Death Star, so we've stuck with Death Star because
27 that's more common these days.

28 If the intertie is congested in the import

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01 direction, the ISO will make a congestion payment to any party
02 filing a counterschedule for relieving that congestion.

03 Now, is congestion really relieved? Well, yes,
04 you've opened up a portion of the existing transmission contract
05 that's being used, but really, since no power is flowing, it's
06 hard to say in any real engineering congestion has been
07 relieved. But given that you've hidden the import inside of the
08 existing transmission contract, and you're showing the export to
09 the ISO, you will get paid. So, you'd better do that again and
10 again, which they did.

11 So, I've put a map in here just to show some of
12 the things --

13 CHAIRMAN DUNN: John, for those of us on the
14 dais, you're on the full Death Star?

15 MR. POWERS: I'm on the full Death Star map.
16 It's about Page Four, including my coverage.

17 So, the interties used are immaterial. You could
18 do this at any of the interties in California. But what was
19 often done, because the capacities are quite large and it was
20 convenient, there are interconnections between Oregon and
21 California, and interconnections between Nevada and California,
22 which were used quite frequently in the Enron Death Stars.

23 Now, there's no reason that you actually have to
24 do both halves of this transaction. You can file a
25 counterschedule, one intertie at a time. And I've sort of
26 unfortunately introduced the term "half Death Star" to describe
27 the practice of doing this only once instead of twice. It's not
28 a complete circular schedule, but it's a perfectly offsetting

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01 counterschedule that, again, no power needs to flow to fulfill
02 this schedule. So, any promise of relieving congestion is not
03 backed by any actual engineering fact. There's nothing really
04 going on to relieve any real congestion.

05 You can do that in the Northwest or you can do
06 that in the Southwest. I have maps for both that give the idea.

07 Based on the data available from the ISO and from
08 L.A., thanks to the work of this Committee, we actually have
09 gone about building a Death Star detection machine, which sounds
10 a bit similar to what Eric's group has been doing.

11 We were unaware of Eric's efforts until quite
12 recently, but we have reviewed the report that he's
13 disseminated. And the methods are a little bit different
14 because we were looking directly at the L.A. system data and
15 were able to do matches directly without having to do some of
16 the additional work he's done in sort of untangling some of the
17 records at the ISO. So, we can compare directly between one of
18 the off-system systems used to file counterschedules and the
19 ISO's scheduling information.

20 We can match by date, and time, and tie point,
21 and energy type, and megawatt amount, anything we want. And we
22 definitely have found some of the full Death Stars that Eric has
23 pointed out. We've also found a great volume of these half
24 Death Stars, and we're in the process of figuring out what
25 legitimate business purpose these might have.

26 I do want to say in passing that while I
27 understand the reasoning for making matches the way Eric has
28 done in his report, I would not characterize as an upper bound,

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01 at least for the Death Star portion, anything that matches

02 exclusively by megawatt amounts, because there's nothing to
03 prevent a scheduling coordinator from breaking a transaction
04 into two pieces.

05 CHAIRMAN DUNN: Let me interrupt, John, if I can.
06 What you just identified, can you try that in
07 some lay terms.

08 MR. POWERS: Sure, yes.
09 Let me back up two pages here, or one page even,
10 to the Southwest half Death Star. If instead of filing a
11 schedule that says, 50 megawatts to Nevada and 50 megawatts to
12 California, you filed a schedule that says, 50 megawatts to
13 Nevada and two schedules that said 25 megawatts to whatever the
14 other way is, you would miss -- I would miss, with the Death
15 Star detection machine we've been building, we'd miss that
16 transaction altogether.

17 Now, there's ways to, you know, to capture that.
18 But my understanding from the tables in Dr. Hildebrandt's report
19 is that we were matching on megawatt amounts to be able to
20 determine offsetting schedules. That's a good strategy that
21 will find you some, but it may or may not find you all of them.

22 CHAIRMAN DUNN: And if I know you're doing it,
23 and I split up my schedules, I'm going to circumvent the
24 detection machine.

25 MR. POWERS: Right. Or, if you have a legitimate
26 sale going on, say you have a legitimate export of 100
27 megawatts, and then you add 50 megawatts to that and 50
28 megawatts the other way, that doesn't make that second pair of

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01 transactions any more legitimate just because you have one sale
02 that's for a legitimate business purpose. You can bury these
03 other deceptive transactions inside.

04 So, I want to reiterate something that
05 Dr. Hildebrandt said, this is not a trivial data mining process.
06 There is a very great amount of data available at the ISO and
07 almost as much from L.A. There's a lot of information there.

08 We have begun to screen that and found many, many
09 matches that look to us similar to the Death Star and half Death
10 Star strategies as articulated in Enron's memos.

11 CHAIRMAN DUNN: John, listening to you, at least
12 my perception is that any Death Star detection system probably
13 has an infinitesimal number of ways to circumvent it, because
14 it's based simply on preordained numbers, like schedule-to-
15 schedule, 50 out-50 in. If it's not that, it's not detected as
16 a Death Star.

17 MR. POWERS: Right.

18 CHAIRMAN DUNN: That sort of cat-and-mouse game
19 could continue forever?

20 MR. POWERS: Yes.

21 CHAIRMAN DUNN: That was just my perception.

22 MR. POWERS: So, there are things that we can
23 look for in the past that will help us be able to document
24 individual events that could be backed up by interrogatories or
25 anything of the things we talked about earlier.

26 But as this -- without greater transparency,
27 without access to information about what's going on
28 simultaneously on both systems, you can always devise something

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01 that would hide these kinds of transactions.

02 But verifiable information about sources and
03 sinks, which is something that Eric hit upon towards the end of
04 his discussion, is very important for these transactions.
05 That's what makes these legitimate transactions. If there is a
06 real source of power backing up a real load to which you're
07 delivering that power, then, you know, that's what a schedule is
08 supposed to be.

09 CHAIRMAN DUNN: Okay.
 10 MR. POWERS: Similar to Dr. Hildebrandt's
 11 comments, I would say that a match in our system indicates the
 12 beginning of due diligence and not the end.
 13 So, we had a conversation that Chris described a
 14 few minutes ago with Powerex because they lit up on several
 15 transactions. And they were able to explain what was going on,
 16 and some of the problems we were having with our matches, so
 17 that the net effect of that conversation was that we were able
 18 to improve the matching power of our algorithm.
 19 I would not speak to the universe of all
 20 transactions they undertook, but the ones we looked at looked
 21 like they had a legitimate business purpose.
 22 Now, we've also found ones for Enron that, you
 23 know, that definitely meet the description of a full Death Star
 24 as described in the Yoder-Hall memos. And even in the records
 25 that the ISO has provided have such quaint names for half of the
 26 transaction as "Death" and "Star." This looks a lot more like
 27 it probably was filed under false pretenses; it looks that way.
 28 So, others can be the judge of that.

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 01 We put a few sample transactions from Enron up
 02 here just so people can look at them. But you see what they're
 03 doing. They're filing schedules in and out of California on two
 04 separate systems at the same time. They cancel perfectly, hour
 05 by hour, megawatt by megawatt, tie point by tie point. And, you
 06 know, that meets the description that was in the memos that have
 07 been revealed.

08 Anything you want to know about that?
 09 CHAIRMAN DUNN: I'm going to pose to you, John,
 10 the question that I posed to Eric that he reluctantly declined
 11 to get specific about.
 12 As to Death Star, who in your opinion, other than
 13 Enron, engaged in Death Star-like activity that was not for
 14 legitimate business purposes?

15 MR. POWERS: Yeah, and where we are is, we've
 16 found matches that look like they could be Death Star projects
 17 for several scheduling coordinators, but we've only had the one
 18 conversation that I just cited with Powerex.

19 Our purpose is to name names, and we'll be happy
 20 to after we've had these discussions, because so far, all we've
 21 got is matches that looks like, you know, there's some funny
 22 data.

23 So, when we talk to these, and again, Chris has
 24 been great at helping facilitate these conversations with the
 25 parties involved, we'll be happy to name names. Can't do it
 26 today. We're really very -- you know, as I say, we're very
 27 early into this process compared with Eric's report because, you
 28 know, we hadn't even seen Eric's report until within the past
 0052 month.

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 02 CHAIRMAN DUNN: Senator Morrow.
 03 SENATOR MORROW: To clarify, is Powerex then
 04 entirely off the suspect list?

05 MR. POWERS: No. Powerex explained the business
 06 purposes of the transactions that we were -- that we were
 07 looking at. So, you know, Powerex has indicated a willingness
 08 to work with us so they will be off the list, because they think
 09 their transactions were all for a legitimate business purpose.

10 But we only discussed a subset of our findings
 11 with them.

12 CHAIRMAN DUNN: Mr. Drivon.
 13 MR. DRIVON: It seems to me that when you look at
 14 these sorts of transactions and try to analyze them, you're kind
 15 of faced with a situation kind of like a fellow looking up at a

16 clear night sky and saying, Which one of those stars am I going
 17 to have a look at? Because there's a whole lot of stars that
 18 you could have look at; aren't there?
 19 MR. POWERS: Yes, there are.
 20 MR. DRIVON: And for every one of those that you
 21 pick out, there's a whole lot of data that's necessary to be
 22 looked at in order to make any kind of conclusion.
 23 MR. POWERS: Right.
 24 MR. DRIVON: So, given the real world of
 25 resources, can I conclude that it's highly unlikely that we will
 26 ever be able to put our arms around the general ballpark of the
 27 effects of these kinds of activities?
 28 MR. POWERS: I would hesitate to say I could ever

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01 identify everything that might be a Death Star.
 02 I would say that we could get to being able to,
 03 you know, approximate an order of magnitude impact.
 04 But I would agree with your statement. It would
 05 be very difficult to say we've captured them all and nothing
 06 but.
 07 MR. DRIVON: If I understand it correctly, the
 08 general idea of this kind of market behavior was a promise to
 09 supply power to mitigate congestion. Was that it?
 10 MR. POWERS: Or maybe just to collect congestion
 11 fees, but a promise is in there, yes.
 12 MR. DRIVON: On the surface, you'd say, well,
 13 we're going to supply some power to relieve this congestion over
 14 here. That's the surface of it; right?
 15 MR. POWERS: Right.
 16 MR. DRIVON: Then you get to the fact that
 17 apparently they never intended to supply any power or mitigate
 18 any congestion; right?
 19 MR. POWERS: That's a fair characterization.
 20 MR. DRIVON: They just promised to do both
 21 without ever intending to do either, apparently.
 22 MR. POWERS: Uh-huh.
 23 MR. DRIVON: And then the next thing is, maybe
 24 there was never any congestion in the first place, because the
 25 congestion that was there was something that was caused by a
 26 schedule that never existed, or on a timeline, for instance, that
 27 wouldn't accept the kind of schedule that was there, and
 28 appeared to be congestion. We call it phantom congestion;

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01 right?
 02 MR. POWERS: Yeah. The problem of phantom
 03 congestion is -- can certainly be related to this.
 04 MR. DRIVON: So now you've got a fellow that's
 05 promising to supply power in order to mitigate congestion
 06 without ever intending to supply any power or mitigate any
 07 congestion, and the appearance of congestion could well be
 08 something that that same entity made appear to be when it really
 09 wasn't?
 10 MR. POWERS: Yeah. We have not tried to confirm
 11 that last piece. We have not tried to look to see if the volume
 12 was such that the false -- these schedules actually pushed
 13 interties into a state of congestion by the ISO's definitions.
 14 But that's possible.
 15 MR. DRIVON: Although we have been able to figure
 16 out that there were instances of congestion that was phantom,
 17 maybe not connected, or at least you haven't looked at whether
 18 they were connected with the Death Star situation.
 19 MR. POWERS: Correct.
 20 MR. DRIVON: And then, of course, if you are
 21 going to have a problem with supply, then you move into an area
 22 of ancillary services, at least as a possibility.

23 MR. POWERS: Or into the real-time market, yeah.
 24 MR. DRIVON: So, if you did all of this, then at
 25 the end of it, of course, you could Get Shorty, which would be
 26 to promise to supply ancillary services that you didn't have and
 27 knew for sure would never be needed. And you could get paid for
 28 that, too.

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 01 MR. POWERS: Yeah, these different strategies can
 02 interact with one another.
 03 And again, I was really just here to mop up after
 04 the Death Star issue, because there's a lot of these issues that
 05 can all be stacked on top of each other.
 06 MR. DRIVON: I'm just trying to figure this out,
 07 because it's kind of complicated for me.
 08 MR. POWERS: Right, yeah.
 09 MR. DRIVON: And so, then you say, it's pretty
 10 easy to evade all of this by just changing the way that you do
 11 it in little ways that gets around the algorithms that you
 12 figure out to try to catch them at it?
 13 MR. POWERS: Well, unless there's information
 14 required about the source and the sink for the schedule.
 15 MR. DRIVON: Transparency.
 16 MR. POWERS: Right. We advocate transparency.
 17 We like transparency.
 18 MR. DRIVON: Me, too.
 19 CHAIRMAN DUNN: I'm detecting a theme here today.
 20 MR. DRIVON: Now, the other thing is, given the
 21 ease, given the obscurity that we have now as opposed to the
 22 transparency we would like to see, and given the resultant ease
 23 of evasion with respect to detection and analysis of this
 24 situation, what do you think the probability is that that
 25 activity has stopped?
 26 MR. POWERS: Um, there's no mechanism that I'm
 27 aware of that would reliably and fully stop that sort of
 28 activity today.

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 01 MR. DRIVON: So if we're to believe that it
 02 stopped, we have to make that belief based upon our ability to
 03 accept the good will and general law abiding nature of the folks
 04 who have been involved in this in the past?
 05 MR. POWERS: What stops this kind of activity is
 06 more transparency and more information being disclosed about
 07 what the activities of every participant really are.
 08 MR. DRIVON: And those two criteria that you have
 09 just outlined for us, on that we're 0 for 2.
 10 MR. POWERS: Yeah, we need -- needs work.
 11 CHAIRMAN DUNN: Okay.
 12 John, any other comments on the Death Star side?
 13 MR. POWERS: Just that we would be happy to come
 14 back and share our findings as we go along.
 15 And we appreciate the help we've gotten from
 16 Christian in pushing this research.
 17 CHAIRMAN DUNN: You can safely assume that the
 18 invitation to return and share those findings will be made.
 19 Before we roll into the C66, I want to take a
 20 personal note here.
 21 After sitting and listening to Larry question
 22 John on few issues, something that I want to make everybody
 23 aware of, although he tries to downplay it.
 24 Two years ago when we started this investigation,
 25 Larry Drivon had, like the rest of us, limited exposure to the
 26 issues of energy. I think many of you who have dealt with him
 27 over the past two years have come to find that he is quick
 28 student and truly a master many of the issues, very complex

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01 issues relating to energy.

02 In recognition of his work, for those lawyers in
03 the room, you'll understand this, the National Law Journal just
04 recently named him as the Pro Bono Lawyer of the Year for entire
05 nation.

06 So, congratulations, Larry, for that wonderful,
07 wonderfully well-deserved recognition for your work on behalf of
08 the Committee, Larry. I just wanted to make sure the public was
09 aware of that.

10 I won't open it up for questions or comments on
11 your award, Larry. We'll have to put you under oath at that
12 point in time.

13 What we want to do now is to roll into the C66
14 issue as identified. Before John starts talking about the
15 substance relating to C66, I've asked Chris to share with the
16 Committee the procedural struggle we've had with respect to the
17 C66 issue.

18 Chris, if you would, please.

19 MR. SCHREIBER: Thank you.

20 I'll try to make this as brief as possible,
21 because I know we are operating on a short timeframe here.

22 The Committee undertook to get information,
23 certain data, from the ISO in about May or June. Actually, I
24 believe it was June was our first official request to obtain the
25 schedules, flows, and payment information from the ISO for the
26 winter of 2000-2001.

27 The reason for this was because the ISO had
28 claimed in a series of reports during that time period that its

0058 01 transmission lines were 100 percent congested, 100 percent of
02 the time on several days.

03 That data did not reconcile with publicly
04 available data from the Bonneville Power Administration. And
05 this discrepancy between the two was critical to answering
06 several questions about the effect of the Enron strategies on
07 the reliability of the grid, as well as on the management and
08 policies and practice of the ISO.

09 The ISO, upon our initial request and several
10 subsequent requests, to make a long story short, was
11 extraordinarily reluctant to produce this data to us. And it
12 would be my opinion -- and I made this clear, and we've since
13 reconciled it, several several months later -- was reluctant to
14 provide this information to us. In fact, I would characterize
15 it as, they had a distinct desire to make sure that we didn't
16 get it.

17 CHAIRMAN DUNN: Did not get it.

18 MR. SCHREIBER: Did not get it.

19 Several letters, probability four to six letters
20 later, several conference calls later in which the Committee and
21 its consultants expressed, you know, I would say humble
22 ignorance about the subject, and about wanting the ISO to take
23 us through this data, we finally got it at the end of October.

24 What we discovered at that point was that the
25 data that we had long been requesting uncovered this C66 issue.
26 And just to characterize a particular conference call that we
27 had, we'd been unable to, as I mentioned, to reconcile publicly
28 available data with the ISO data.

0059 01 At issue here was: Was the transmission line
02 between California and Oregon available and open during key
03 moments, including blackout days, during the energy crisis? The
04 ISO has claimed that it was completely congested, and we believe
05 that that was not the case.

06 When we finally opened up the data, what we
07 discovered was that the ISO had -- and I believe the word is

08 appropriate -- secretly introduced a protocol which they'll
09 explain later today in which they limited the transmission
10 capacity on these lines. And there was particular data set
11 within all the data that we had requested which has now -- I'm
12 going to colloquially refer to it as the C66 protocol.

13 It was, from a staff perspective, a struggle to
14 get the data. And as I commented then and have commented since,
15 it appeared that the ISO had something to hide on this issue.

16 CHAIRMAN DUNN: I know the ISO will resist that
17 characterization, Chris, but let me just ask you your own
18 personal opinion as to why the ISO may have had motivation not
19 to fully disclose that data, if you know?

20 MR. SCHREIBER: Well, my personal opinion about
21 their refusal to discuss close the data is -- I guess I would
22 characterize it by saying that what we found is of questionable
23 policy and -- well, I guess I would say that. It's a
24 questionable policy that the ISO undertook, and they undertook
25 it in secret, and I think its disclosure today -- I know it's
26 been mentioned previously -- but its more full disclosure today
27 is not -- was not an attractive possibility to the ISO.

28 CHAIRMAN DUNN: And fair to say that we've been
0060 in a debate with them as to the legality of the C66 issue.

01 MR. SCHREIBER: Correct.

02 CHAIRMAN DUNN: And the practical import of
03 reducing that capacity during times of blackout is that, at
04 least theoretically, such blackouts could have been avoided if
05 the full capacity had been made available; is that correct?

06 MR. SCHREIBER: I would defer to an expert, but
07 that's my understanding.

08 CHAIRMAN DUNN: Anything further, Chris?

09 MR. SCHREIBER: Not right now.

10 CHAIRMAN DUNN: John?

11 MR. POWERS: Let me just make a couple of
12 comments to echo some things that Chris said.

13 That C66 is one instance of what's known as a
14 capacity benefit margin, or CBM. This is something that
15 undoubtedly transmission operators --

16 CHAIRMAN DUNN: I'm going to interrupt you and
17 remind you, you know that you're speaking to lay people. And I
18 know when we're dealing with things like CBMs, and so forth, try
19 to keep us at a first grade level.

20 MR. POWERS: Sure.

21 CHAIRMAN DUNN: It will be greatly appreciated.

22 MR. POWERS: It is definitely a tool that
23 transmission operators may use to protect the reliability and
24 security of their system. That's something that is in, as the
25 ISO has pointed out, the ISO tariff and in the North American
26 Electricity Reliability Council rules and guidelines, that it's
27 a recognized tool in the industry for maintaining system
28

0061 reliability.

01 The way that -- my review of the way the ISO has
02 used it is that it was an unusual application of an industry
03 standard tool, in particular, the duration and method of
04 determining the amounts of the CBM declared, or the amount put
05 on in terms of reserving capacity.

06 The ISO put out a fact sheet in which they make
07 it clear that they were not restricting capacity because the
08 energy was allowed to flow over those interties in the real-time
09 market.
10

11 In fact, while that may technically be true, that
12 capacity was reserved by the ISO for its own use and taken away
13 from any market participants who wanted to reserve capacity in
14 the hour-ahead or day-ahead markets.

15 MR. SCHREIBER: Maybe I can give just a quick --
 16 MR. POWERS: Sure.
 17 MR. SCHREIBER: -- couple sentences from a lay
 18 person's perspective about what capacity benefit margin is.
 19 There's a transmission line, and I'll pick one,
 20 although the ISO did the CBM protocol on three separate intertie
 21 points, is my understanding, for a period varying anywhere from,
 22 I think, 10 to 13 months.
 23 CHAIRMAN DUNN: Late 2000 into --
 24 MR. SCHREIBER: Yeah.
 25 Starting on December 30th of 2000, the
 26 transmission line between California and Oregon, to use an
 27 example, the DC intertie, is about 2150 megawatts. There are
 28 existing transmission contract holders that use the transmission
 0062 and have a contract to do so on this line. And the sum total of
 01 those contract holders' megawatts reserved on the line
 02 approximates about, let's say, on any given day 1400 megawatts
 03 of the 2150. That leaves an available transmission capacity,
 04 ATC, of about 750 megawatts.
 05 Each day, the ISO would put that 750 megawatts up
 06 for auction for other market participants to bid on who wanted
 07 to use the transmission line.
 08 What the ISO did when they invoked this protocol
 09 is, they simply swept away that 750 available megawatts.
 10 And they have argued that they did so for
 11 reliability reasons, as I think, John, you're probably going to
 12 get into.
 13 But I guess the point I want to make here is that
 14 there is a rated capacity of the line. There are existing
 15 transmission contracts on the line that, you know, eat up a
 16 substantial portion of the transmission.
 17 And then there's this remaining bit. And that
 18 remaining bit is what CBM eliminates, or in this case, all of
 19 which. I mean, you technically could, you know, reserve under
 20 CBM 100 megawatts or 50 megawatts.
 21 They took all of it.
 22 MR. POWERS: Right.
 23 So, any kind of restriction on intertie capacity
 24 with other regions has pluses and minuses for California. But
 25 certainly, it can have unanticipated effects. It can separate
 26 markets at the time when more flexibility is needed. It can
 27 drive participants away from the market. Participants who don't
 0063 understand where the capacity which used to be available has
 01 gone may decline to bid into the California market at key times.
 02 In the Northwest, we really -- we, colleague,
 03 Robert McCullough and I, have spent a good deal of effort trying
 04 to find anyone who understood what was going on, who knew about
 05 a specific reservation of capacity in the day-ahead and
 06 hour-ahead markets, and on an intertie which many in the
 07 Northwest view as important, since they did spend a lot of money
 08 to build it.
 09 And we have been unable to find anyone who
 10 understood what the ISO was doing and who knew that there was a
 11 CBM placed on the intertie over this period.
 12 Now, that's, you know, we can get into what was
 13 and what wasn't on the ISO website on what day, okay. But the
 14 practice in the industry was -- or the knowledge in the industry
 15 was not common. It was not commonly known that this was going
 16 on.
 17 So, that did discourage market participants from
 18 the kinds of transactions that they had been doing up to that
 19 point, which included scheduling power into California for
 20 re-export into the Northwest, for re-import back into

22 California. This is something that's been going on between the
23 two regions for as long as there have been interties. The
24 Northwest is a great place to store power because of the
25 Columbia River. You can actually store energy behind the dams
26 in the form of water for times when it's needed here in
27 California.

28 The ISO -- it used that strategy extensively

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01 during the crisis. They did store energy in California and
02 re-import it. But there may have been opportunities to do more
03 of it that were restricted by the imposition of this CBM

04 Yes, the real-time market was still in place, but
05 the ability to schedule a plant -- most power plant operations
06 are scheduled ahead of time. Most are not scheduled in real
07 time. So, power plant operations in both the Southwest and the
08 Northwest could have been affected to the point where a certain
09 amount of power was not scheduled for export and re-import
10 because participants didn't know they could.

11 MR. SCHREIBER: I would point out, just to
12 interject real quick, John's point about the lack of
13 understanding is underscored here. We have a letter from the
14 Power Manager at Tacoma Power, George Whitener, to you. He
15 faxed that over this morning. And it explains Tacoma's
16 ignorance about the protocol at the time.

17 And as John said, we really have not found
18 anybody yet that knew this was taking place.

19 CHAIRMAN DUNN: Let me stop on that point. I
20 know we do have ISO representatives here, and I will invite them
21 up in a few minutes to comment.

22 But they have been telling the Committee, the
23 Committee staff in particular, "We did put it on the website."

24 Now, has your research, John, I want to make sure
25 I understand, you've contacted a number of affected interests,
26 market participants and otherwise.

27 MR. POWERS: Yep, Yep.

28 CHAIRMAN DUNN: Many of whom are pretty

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01 sophisticated folks on how the market operates.

02 MR. POWERS: Yes.

03 CHAIRMAN DUNN: Including would probably monitor
04 any sort of subtle announcement of something as significant as
05 this.

06 MR. POWERS: Yeah.

07 CHAIRMAN DUNN: And as of yet?

08 MR. POWERS: We have found no one. And, you
09 know, this is inclusive of presentations at power conferences in
10 the Northwest with power managers from all the utilities in the
11 Northwest where, you know, my colleague would give a
12 presentation and ask, "Now, who knew?" And, you know, would get
13 a storm of people up afterwards saying, "Thank you for
14 explaining this. We finally understand what happened all this
15 time ago."

16 And certainly it was known that the capacities
17 had been reduced. Certainly it was known that power was not
18 getting north when entities were trying to schedule power for
19 export and they couldn't do so.

20 But as to why and what the mechanism was, this
21 was -- this was not well known.

22 MR. DRIVON: Could I ask just a question for
23 information.

24 When this capacity is apparently removed, does
25 that then look like congestion in that line?

26 MR. POWERS: Uh, my understanding of all of the
27 ISO congestion rules is imperfect.

28 MR. DRIVON: No, no. I mean from the standpoint

0066

01 of a market participant who might be out there looking for
02 evidence of congestion.

03 MR. POWERS: I'm not sure. I don't know the
04 answer to that. I can find out.

05 MR. DRIVON: Because I was just thinking about,
06 if some of them were trying to Death Star and Get Shorty, and
07 all of that kind of stuff, maybe there would be the appearance
08 of congestion that was caused by this kind of activity.

09 MR. POWERS: My understanding is that by setting,
10 you know, I apologize for not having the picture in the handout,
11 but the picture just follows my table on Page Six here.

12 My understanding was that all available capacity,
13 or essentially all available capacity for new firm use, which is
14 the day-ahead or the hour-ahead market, was absorbed effectively
15 by the imposition of -- the picture I have here is of C66 on the
16 California-Oregon intertie. So that until after the hour-ahead
17 market closed, the line would appear congested. That's my
18 understanding of what the effect would be. It would be a good
19 question for the ISO.

20 MR. DRIVON: In other words, it looked like the
21 pipe was full?

22 MR. POWERS: Uh-huh. And some of the ISO market
23 reports at the time reported really what -- Chris said this well
24 before. This is what set us into exploring this. We were
25 getting reports that said California-Oregon intertie is 100
26 percent congested 100 percent of the time on several days.

27 When we were able to go look at the data from
28 Bonneville, which meters flow in real-time on the line, which

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01 showed that the line was half -- half empty or three-quarters
02 empty at different hours of the day.

03 So, we were trying just to answer the question:
04 What is causing the congestion to be reported? And this was, I
05 think, one of the root causes that was identified.

06 MR. SCHREIBER: If I may, I'm going to lay on
07 another layer of a little bit more technical information, and
08 John, you can correct me if I'm wrong.

09 If you can imagine PG&E in the north. Let's say
10 they have a -- I'll make up numbers -- they have a load they
11 need to meet of 5,000 megawatts to their customers.

12 You can imagine that as a control operator, they
13 may need -- you know, they could experience an unexpected bump
14 in their demand of their customers. So, they would request of
15 the ISO, or the ISO would make the determination that there
16 would be additional transmission capacity possibly necessary.
17 That would be an example of where a CBM would be more
18 traditionally used.

19 The operator would say, "We're going to reserve
20 an extra 500 megawatts just in case there's a bump so that we
21 can bring power in on the transmission line," so that you, PG&E,
22 can then deliver that to your customers. That would be an
23 example of an import situation in which transmission capacity
24 would be used, and the capacity benefit margin would be
25 appropriate.

26 This, we should add, is an export situation,
27 where they are invoking what was traditionally an import use on
28 the power lines leaving the state.

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01 And the ISO has explained to me in our
02 conversations about this, that this was a tactic that they
03 undertook to combat megawatt laundering, because they were
04 seeing a lot of megawatts leave the state, go to Oregon, come
05 back, either A, circumventing the price caps, or B, simply not
06 coming back.

07 John, if you can make the point about the pay
08 back of power. I think it's relevant.

09 MR. POWERS: I mean, the issue of megawatt
10 laundering was real over this period. It was one of the schemes
11 that was identified as a problem in the -- in the memos we were
12 talking about this morning.

13 The reason the California-Oregon intertie and the
14 DC intertie were built was that the two regions operate very
15 differently. It has been routine for decades for Northwestern
16 utilities to factor, or to store and return, power that
17 California sends north. So, this is a transaction that is done
18 very routinely by power managers in the Northwest on behalf of
19 requests from the Southwest, especially California.

20 Now, you know, I can't say how effective a CBM
21 would be at preventing megawatt laundering, but it was -- it
22 appears to have been effective in preventing legitimate deals
23 from going on in this way that has been done for many years,
24 sending power north for storage, and return when needed.

25 MR. SCHREIBER: And I would just make that even
26 more lay.

27 That means power from California sent up to
28 Oregon on a Monday would be returned back to California via

0069 hydro release or through some hydro-electric generation on a
01 Wednesday.

02 Meaning on the 17th, when California was blacked
03 out of January of 2001, presumably or, I guess, it's possible
04 that had we sent power up to Oregon two days prior, that might
05 have been repaid enough so to have prevented the blackout.

06 CHAIRMAN DUNN: But because of the reduction in
07 capacity, we couldn't get it back, from a lay perspective.

08 MR. SCHREIBER: We never sent it up.

09 MR. POWERS: Never sent it up.

10 And again, there was no such restriction in the
11 real-time market, and the ISO did use this strategy in real-time
12 themselves. Not all plants that would bid into the day-ahead
13 and hour-ahead market would be available in the real-time
14 market. So, it is possible that the ISO caused some plants to
15 forego the opportunity to export power to the Northwest for
16 later re-import.

17 The ISO definitely understood the strategy of
18 sending power north and getting it back the same day, next day,
19 next week, or whatever. The effect wasn't to prevent that from
20 happening. The effect may have been to reduce the volume based
21 on restricting that activity in the day-ahead and hour-ahead
22 markets specifically.

23 CHAIRMAN DUNN: Okay, John.

24 MR. SCHREIBER: I would say, just to add another
25 element here, John has mentioned that utility executives in the
26 Pacific Northwest were unaware of the protocol.

27 The ISO has claimed that it was listed on its

0070 website, meaning the utility executives saw that 750 megawatts I
01 talked about earlier, they saw that it was at zero.

02 I think the ISO, if I understand their fact
03 sheet, considered that adequate notice that they were doing
04 this.

05 The truth is, though, that the ISO did actually
06 brief one market participant, and that was Enron. When we
07 discovered this, we simultaneously did a search of Tim Belden's
08 e-mails to find out whether or not he knew about this protocol.
09 And you'll see in the press packets and in the Members' binders
10 as well that, in fact, he did know that there was a dialogue
11 between several members of his trading operation in Portland
12 that were briefed by the ISO.

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CHAIRMAN DUNN: But that briefing was at Enron's request when they discovered it; is that correct?

MR. SCHREIBER: We presume. It's not been clear. The ISO has not made clear to us how or why Enron was briefed. We don't know who -- my presumption is that Enron made the call, noticing the ATC dropping from 750 in this example to zero and asked.

CHAIRMAN DUNN: Mr. Drivon.

MR. DRIVON: This Enron briefing, as I understand it, or at least the e-mails are in April of 2001?

MR. SCHREIBER: Correct, April 3rd, I think, 2001, yeah.

MR. DRIVON: Wasn't Enron still playing some congestion games after April of 2001?

MR. POWERS: I don't know. I don't have all the dates.

MR. DRIVON: I believe I remember they were.

CHAIRMAN DUNN: John, more on C66.

MR. POWERS: Yeah, the other things, Chris brings up the fact sheet, and we looked at that for a couple of things. The fact sheet cites problems on what's called Path 15, from Southern California to Northern California, as one of the reasons that this CBM was imposed at the -- on the California-Oregon intertie.

While it's possible that a restriction at the California-Oregon border would somehow improve what's going on on Path 15, a far more direct approach would be to just put a restriction on Path 15 if that's the real issue.

Further, the DC intertie, which goes from L.A. up to the Nevada-Oregon border, is parallel to Path 15. It does not -- no change on the DC intertie will have any but the most indirect effects on Path 15. So, that explanation is, at best, in complete.

And the effects of something on the market, which I put on the last page here, were to greatly separate the two markets beyond what they had been historically, even during the price spikes of 2000.

This is my last page.

CHAIRMAN DUNN: Entitled, "Wholesale Electricity Prices: COB and Palo Verde."

MR. POWERS: Yeah.

I'm a simple country economist, and I look for things that, you know, separations in the market.

CHAIRMAN DUNN: We have a simple country economist, and we have a simple county lawyer over here.

MR. POWERS: Right.

If the markets are efficient, if there's enough exchange going on between the two markets, the price in Palo Verde and the price at COB should not diverge very much. The only explanation is a separation between the two markets based on restrictions, real or arbitrary, I don't know, that separated the two markets so that somehow, trading between the two was restricted.

Prior to the imposition of the CBM, the two markets, even during times of the chaos, traded at least fairly in sync. After the imposition of the CBM, the two markets diverged quite dramatically and in ways that we have not seen before or since. The Northwest, given that California was short in supplies --

CHAIRMAN DUNN: Let me interrupt you for a second, John.

As you look at those two bar graphs there.

MR. POWERS: Two lines.

01-21-03.TXT

21 CHAIRMAN DUNN: Two lines, I'm sorry. When the
22 reduction was instituted in very late 2000 --
23 MR. POWERS: Yes.
24 CHAIRMAN DUNN: -- these two lines separated?
25 MR. POWERS: Yes. The price at the
26 California-Oregon border and the price at Palo Verde, which
27 normally are -- move in sync, and which normally are quite close
28 to one another, representing nothing but the cost of moving
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01 power from one region to another, the costs in the two regions
02 diverged for reasons no one in the Northwest could understand at
03 the time. No one quite got why the price in the Northwest
04 should suddenly be, you know, very much meaningfully higher than
05 the price at Palo Verde.
06 One possibility is that the two markets
07 separated. The only possibility that I can think of is that the
08 markets were separated.
09 CHAIRMAN DUNN: Anything further in your
10 presentation?
11 MR. POWERS: No, I have no more, but I can answer
12 questions.
13 CHAIRMAN DUNN: Let me pose one. I'll certainly
14 ask it if the ISO representatives wants to comment as well.
15 Why late December? Or why late 2000? Why eleven
16 months or so that this was in operation from your perspective,
17 John?
18 MR. POWERS: Why did it start?
19 CHAIRMAN DUNN: Yes, why did it start in late
20 2000? Why did it end approximately, I think, Chris, you
21 mentioned this, eleven months later?
22 MR. SCHREIBER: Yeah, and it depended on -- they
23 did it on three different tie points. They did it at the
24 Nevada-Oregon border, Path 15, and at the California-Oregon
25 intertie.
26 So, between those three, it stopped in October,
27 December and January of '02, for January '02, December and
28 October of '01.
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01 CHAIRMAN DUNN: Understood.
02 John, from your perspective, why those particular
03 dates?
04 MR. POWERS: Why it started is, you know -- why
05 it ended I don't know, because there's nothing special going on
06 in late 2001. The supply -- well, the energy crisis as tracked
07 by pricing and headlines had mitigated by the summer. So, there
08 was no reason I can think of to have anything in place for many
09 months after that. I don't know.
10 Why it began when it did, I can only speculate.
11 My speculation would be that somehow letting power out of state
12 was viewed as bad. And, you know, if they were seeing power go
13 out of state and not returning, one reaction might be to try and
14 keep it all in state.
15 Now, that's a trade-off that I can't say, for
16 policy purposes, whether it's good or bad, but certainly it did
17 have the unintended consequence of the potential for missing
18 opportunities to integrate the two regions.
19 But, you know, the exact date, I have no idea why
20 it would start on December 30th.
21 MR. SCHREIBER: I need to actually correct
22 something.
23 We know it started on December 30th of 2000, and
24 I apologize, it stopped in the one case in October of 2001, in
25 another case at a different tie point in December of 2001, and
26 on Path 15 on January 31st of 2001.
27 CHAIRMAN DUNN: 2001 or 2002?

28 MR. SCHREIBER: 2001. So in that case, it lasted
0075 just one month.
01 So the greatest time was about eleven months, a
02 little bit more than eleven months, and the shortest was one
03 month.
04
05 CHAIRMAN DUNN: Did the start date for each of
06 those three, the Nevada-California, Oregon-California, and Path
07 15, all start in approximately late December, to our knowledge?
08 MR. SCHREIBER: Yes, to our knowledge.
09 CHAIRMAN DUNN: At that specific time, we had an
10 ISO Board that I'll just label, it was lame duck. The
11 Legislature shortly thereafter changed how that Board was
12 constituted.
13 In your discussions, your investigation, Chris,
14 was either the lame duck board or the new board advised of the
15 C66 issue?
16 MR. SCHREIBER: No. In fact, it is my
17 understanding that there is a forthcoming briefing on Thursday
18 for the first time on this issue.
19 CHAIRMAN DUNN: John, anything additional to add?
20 MR. POWERS: No, that's it.
21 CHAIRMAN DUNN: Questions, Senator Morrow?
22 SENATOR MORROW: Mr. Powers, you may not be able
23 to comment on this. I'm trying my best to ask the question.
24 With the implementation of the CBM, and obviously
25 you've indicated, whether intended or not, the adverse
26 consequences of that. I take that for granted, that's what
27 happened.
28 On the other hand, I'm hearing that it was
0076 implemented for the purpose of dealing with the megawatt
01 laundering issue.
02 I guess my question is, if you feel competent to
03 venture an opinion on this, but given that, the CBM, the
04 implementation of this, I mean, and its adverse consequences,
05 how foreseeable in your view would those adverse consequences
06 be?
07 I guess what I'm getting to is, okay, the
08 strategy didn't work, but I want to go take it one step
09 further. A lot of times as lawyers, you've got two different
10 strategies. Either one of them could be reasonable under the
11 circumstances and backfire.
12 In view of common industry standards prevailing
13 at the time.
14 MR. POWER: I'll take -- I'll answer both sides
15 of that.
16 I think that someone, you know, with a legal and
17 transmission background might want to look at whether a CBM is
18 the right way to deal with megawatt laundering. Megawatt
19 laundering is a purely economic issue. It's not a system
20 reliability issue. It's not a system security issue.
21 CBM is authorized for reliability and security,
22 not for arbitrary economic reasons.
23 And could the effects have been foreseen? Yes.
24 If you ask an economist what effect is there in restricting
25 trade between two regions with complementary comparative
26 advantage, both sides suffer.
27 Now, could it have been foreseen that soon
0077 thereafter we would have blackouts? I would not be so bold as
01 to ascribe causality. You know, CBM causes blackouts? No. I
02 wouldn't say that.
03 But could you see that it would restrict the
04 flexibility that the ISO had, and that other market participants
05

06 had, in providing more resources to California? Yes, you can
07 foresee that easily.

08 SENATOR MORROW: Given what you just said, do you
09 have an opinion as to whether or not taking this sort of action
10 with the CBM would have been unreasonable under the
11 circumstances?

12 MR. POWERS: I think it would be that it was
13 unusual. It was an unusual application of an industry --
14 industry standard tool.

15 And I have not heard an explanation yet that is
16 reasonable to me. I don't think that the explanation about Path
17 15 is a reasonable explanation about why you would impose a
18 restriction somewhere else. I don't think an explanation about
19 megawatts laundering is reasonable for, you know, to base the
20 argument on system reliability and security.

21 There may be a reasonable explanation, but I have
22 not heard it.

23 MR. SCHREIBER: Senator Morrow, I would also add
24 that once the protocol was invoked, I think it would have been
25 reasonable to have also notified market participants, both in
26 the Pacific Northwest and in California, on a more blanket
27 basis.

28 The ISO claimed that they posted an explanation
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01 on their website, but they didn't do that until November of
02 2001, almost a year after the protocol had been started.

03 From a reasonability perspective, I think there
04 were corollary elements that were not undertaken that would have
05 gone a long way to make it a more reasonable.

06 If I can, I fear that, you know, because this is
07 a retrospective look, that there is -- that we're undoing some
08 of the strides that we've made with ISO staff. They've been
09 very helpful since we broke through this wall in helping us get
10 through this data. And both Dr. Hildebrandt and Beth Ann Burns
11 in particular have been extremely helpful since this.

12 But since we're looking back in a more rancorous
13 time in our relationship, I fear we might return to it, but I
14 hope not.

15 CHAIRMAN DUNN: Understood.

16 One observation as a follow-up to Senator
17 Morrow's questioning.

18 As far as the posting on the website, I'm
19 assuming, Chris, that the Enron memos are publicly available as
20 well, too.

21 MR. SCHREIBER: They are. We've had those
22 waived.

23 CHAIRMAN DUNN: I don't want to inadvertently
24 violate any of our confidentiality rules.

25 While this Chair, certainly publicly, everyone
26 knows, is no fan of Enron, in a reading of those internal Enron
27 e-mails relating to this C66 issue, it seems very clear that
28 Enron discovered it itself and approached ISO about it.

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01 And I'm not aware of any other market participant
02 that was as on top of changes in the market as Enron was, I
03 believe, for not so good reasons, of course, or their intentions
04 were not so good. That these e-mails seem to confirm that a
05 posting on the website, as ISO has claimed, and we will hear
06 from them shortly, certainly didn't educate Enron on what was
07 going on until Enron discovered it themselves and directly
08 approached ISO about it.

09 My observations in reading those handful of Enron
10 e-mails that we have made available.

11 Any questions from the dais? Seeing none, John.
12 ISO, anybody want to respond? There they are in

13 force.
14 John, we're going to have to ask you to step
15 down, since we have limited room here, but ask that you stay
16 within ear shot. In fact, John, that desk right behind Charlie
17 is a good one, because then if we seek your input during the
18 ISO's comments, we've got you readily at hand.
19 Identify yourselves, please.
20 MR. BIBB: Yes. My name is Tracy Bibb. I'm the
21 Director of Scheduling at the California ISO.
22 MR. DETMERS: And my name is Jim Detmers,
23 D-e-t-m-e-r-s. I'm the vice President of Grid Operations for
24 the ISO.
25 [Thereupon the two witnesses,
26 TRACY BIBB and JIM DETMERS,
27 swore to tell the truth, the
28 whole truth, and nothing but
0080 the truth.]
01 CHAIRMAN DUNN: Charlie, how do you want to
02 handle it? Do you want Tracy to run.
03 MR. ROBINSON: I thought what I would do is,
04 first of all, address some of the procedural aspects that were
05 referenced by Chris. And then we would go through a technical
06 explanation of what we were doing with respect to C66 and the
07 transfer limitation.
08 What I wanted to say is that --
09 CHAIRMAN DUNN: Charlie, I'm sorry, I don't mean
10 to interrupt.
11 Just for Tracy and Jim, the same caution I gave
12 to John as well. As much as you can put it in first grade
13 language, we're happier folks up here.
14 Charlie.
15 MR. ROBINSON: I wanted to respond to the notion
16 that we had secretly introduced the protocol, or that we had
17 something to hide, which I think in some ways is probably the
18 most alarming information that you've received.
19 The protocol that we invoked was actually a
20 protocol that's not secretly introduced in December of 2000. In
21 fact, it was part of the original tariff filed by the ISO. And
22 indeed, it was part of a FERC proceeding, so it was not secretly
23 introduced.
24 The second point is that this whole issue, the
25 CBM issue, was the subject of a lawsuit at FERC by Morgan
26 Stanley filed in June, 2001, in which there were a ton of
27 interveners, including all of the California munis, PG&E, and
0081 Edison. Lots of discovery took place in that lawsuit.
02 It was recently withdrawn by the complaining
03 party, Morgan Stanley, after we persuaded them, as we hope to do
04 this afternoon with you, that we were properly using the
05 transfer limitation.
06 But my point here is that clearly we were not
07 trying to hide anything with respect to the various discovery
08 efforts by this Committee. If we were trying to keep something
09 secret, we were clearly pretty unsuccessful because it was part
10 of a FERC procedure for 18 months, which covered the entire
11 period of time during which this Committee has been seeking
12 discovery.
13 CHAIRMAN DUNN: Charlie, I think, as you know,
14 old ground for you and I, or the Committee and your office, and
15 folks at ISO.
16 We've had good times in the respective
17 relationship between the ISO and the Committee, and some not so
18 good times.
19 Trying to get the access to this data, as you

20 know, was probably if not the top, near the top of our list of
21 frustrations which we just could never ever understand. I'm
22 not -- debating it today is not going to help us at all. It was
23 all of my letters to you over the time when we felt we weren't
24 getting the data. It was frustrating beyond any point we had
25 had before.

26 That, of course, you know in the legal world,
27 raised our suspicions about C66.

28 As to the original institution of it, and the

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01 position that ISO maintains that, "We weren't hiding anything
02 from anybody," I understand the statements, I understand the
03 explanation the ISO's provided, and I suspect Jim and Tracy will
04 touch upon it.

05 But the fact that no other market participant
06 figured it out until later on is mind-boggling, when those folks
07 are some of the most sophisticated business folks I've ever
08 encountered in their understanding of their own market that they
09 operated in, particularly the involvement of folks like ISO or
10 FERC, et cetera. That's something to me that just is
11 unexplainable.

12 MR. ROBINSON: Well, I think you may be assuming
13 some facts not in evidence.

14 CHAIRMAN DUNN: Probably true. Was it Gary
15 Ackerman who accused me of being the master of hearsay? I think
16 he was the one.

17 MR. ROBINSON: In regard to the way that it was
18 publicly disclosed, you are quite correct that we did not
19 identify this particular transfer limitation as perhaps we
20 should have at the time.

21 What we did do, and what we had always done, was
22 describe transfer limitations in the aggregate. So, on December
23 30, when this was first imposed, the degree of the transfer
24 limitation was disclosed to the entire market place.

25 Essentially what was not disclosed, we did not
26 disaggregate that information. In other words, we said, "This
27 is the transfer limitation on the line." We did not
28 disaggregate it in order to show that some of it represented

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01 existing transmission contracts, some of it represented what has
02 been called a CBM

03 But the bottom line is, we published on our
04 website the information that we thought was relevant.

05 When we began getting questions about it, then we
06 disaggregated the information in response to the questions.

07 One of the reasons why I think that you may be
08 assuming facts not in evidence is because this is something that
09 when questions were raised, we would simply respond to the
10 questions openly and honestly.

11 There is a suggestion that Enron had somehow
12 received a secret briefing. I don't see anything in the
13 documents that we've received from the Committee that suggest
14 that Enron received any kind of unique briefing. What I see is
15 someone making a telephone call and asking the reason for a
16 larger transfer limitation than they were accustomed to
17 seeing. Of course, they were able to determine that from the
18 publicly disclosed information that was on the website.
19 And of course, the person who answered the phone responded to
20 the question.

21 I don't know to what extent other people asked
22 the question, received the same answer, and went on.

23 So, I suggest you may be assuming too much when
24 you say, "I don't understand why it is that Enron was the only
25 person in the world who figured this out."

26 For all I know, there may have been many people

27 who telephoned, based upon the information that was publicly
28 available, asked the same question, and then went on.

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01 And of course we know there are several people
02 who figured it out.

03 CHAIRMAN DUNN: Morgan Stanley.

04 MR. ROBINSON: Morgan Stanley, who went and filed
05 a lawsuit.

06 CHAIRMAN DUNN: I don't think our suggestion was
07 that Enron was the only one who figured it out.

08 But these were some of the first internal market
09 participant documents that suggested that they, a market
10 participant, presumably others, had to reach out affirmatively
11 to ISO for further explanation.

12 I understand that's not unusual in the operation
13 of something as sophisticated as the market. But let me ask, if
14 I can, Charlie, a very specific question.

15 Was there an intentional -- was the decision not
16 to disaggregate the information around December 30th
17 intentional?

18 MR. ROBINSON: I don't think so. I think we
19 simply posted the transfer limitation with all of the other
20 transfer limitations. I do not believe that it was
21 intentional, that there was an intent to hide the ball, so to
22 speak.

23 But I think you have hit upon the central point
24 that I would like to make on this particular issue. And that
25 is, it is not that we failed to disclose the information. It's
26 the level of disclosure. We did disclose the transfer
27 limitation. We probably should have done a better job in terms
28 of disaggregating the information so that it was more readily

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01 available to people.

02 CHAIRMAN DUNN: We're back to transparency again.
03 Anything further, Charlie?

04 MR. ROBINSON: The only other point that I would
05 make, and I won't belabor it because I know that time is
06 passing, I believe part of the difficulty that you experienced
07 in the discovery on this issue was part of a misunderstanding.

08 The original request coming from the Committee
09 called for schedules. This is not something that appears on a
10 schedule. A transfer limitation is something that's imposed by
11 the ISO. It's not something that appears on a schedule.

12 It took us several months, frankly, to understand
13 precisely what it is that you were looking for. Your original
14 letter in June essentially said, "Give us everything you own,"
15 and it took us several months to try to understand what exactly
16 is it that you're looking for.

17 Once we understood that, and I believe it
18 occurred during a conference call in September, at that point we
19 said, "Oh, well, it's not the schedules you're looking for.
20 What you want to know about are the transfer limitations and the
21 existing transmission contracts. And sure, we can certainly
22 give you the information on those aspects because that's what
23 you're going to need in order to figure out this issue that
24 you've just described to us."

25 So, I do believe part of the difficulty arose out
26 of a misunderstanding of exactly what it was that you were
27 studying, and what it was that you were seeking. And once we
28 understood what it was, then we volunteered to provide you the

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01 information that, frankly, you had not requested before.

02 CHAIRMAN DUNN: Senator Morrow.

03 SENATOR MORROW: Before you move on, so I can
04 understand.

05 Are you saying, Mr. Robinson, that the ISO's
06 position with respect to when C66 was implemented, which was
07 what?

08 MR. ROBINSON: December of 2000.

09 SENATOR MORROW: That at that period of time it
10 was a prevailing belief at the ISO that that was common
11 knowledge within the energy industry, that C66 existed?

12 MR. ROBINSON: What I'm saying is that the
13 protocol was something that was in existence from start-up. Our
14 invocation of the protocol was reflected in some aggregate
15 information that we publicized.

16 We probably should have disaggregated that
17 information. But from what I know, I do not know of any
18 deliberate intent to hide the ball by aggregating the
19 information in the way that we did.

20 SENATOR MORROW: I understand that.

21 But what I think I'm hearing from you, too, is
22 that nobody at the ISO concluded that it is a matter of general
23 knowledge, that everybody knows about it, and there's no need to
24 do anything further?

25 MR. ROBINSON: I guess what I would say is, the
26 actual protocol was a part of the ISO tariff from start-up and
27 should have been public knowledge.

28 And the transfer limitation was identified on an
0087 aggregated basis, and that should have been public knowledge.

02 SENATOR MORROW: I understand that. Let me go
03 one step further.

04 Are you aware of any conversation with any
05 persons from the ISO at any level regarding this issue as far as
06 the degree of public disclosure of something like this? I mean,
07 we're talking back December of 2000.

08 MR. ROBINSON: No, I'm not aware of any
09 conversations of that type.

10 SENATOR MORROW: At some point you made a
11 decision to disaggregate. When did that occur?

12 MR. ROBINSON: I don't know.

13 MR. BIBB: It was posted on our website I believe
14 starting in November of 2001.

15 It was decided to disaggregate it long before
16 that, back in when Morgan Stanley first started questioning in
17 the FERC proceedings.

18 SENATOR MORROW: That was when?

19 MR. ROBINSON: The lawsuit was filed in June.

20 SENATOR MORROW: The decision to disaggregate was
21 made in June?

22 MR. BIBB: The discussion to disaggregate started
23 in June. And then there was some programming that had to be
24 done with the Oasis. That didn't, obviously, take two months to
25 do.

26 But I think there was conversations, if I recall,
27 on how to disaggregate it, how do we want to show it.

28 We clearly knew by then it was total public

0088 knowledge because of the proceedings that were ongoing at FERC
02 with Stanley Morgan and all the intervenors that, in retrospect,
03 that everybody knew about it. The proceedings were public, and
04 that the rush to post it maybe lost some urgency.

05 SENATOR MORROW: So, it sounds like there were no
06 discussions at all as far as how to disclose, to what degree,
07 and how to disaggregate, until sometime on or after June of
08 2001?

09 MR. BIBB: Yes.

10 SENATOR MORROW: And that was pursuant or as a
11 result of the various lawsuits or a lawsuit; is that right?

MR. BIBB: I would say that that prompted it, yes.

SENATOR MORROW: Okay, thank you.

MR. BIBB: What I would like to do is to use the white board here, and please, don't judge me on my artistic value here on the State of California, what it's going to look like.

I'd like to explain why it is we imposed a restriction on the COI in the northbound direction. All the factors that we looked at we believed were good reasons to impose a restriction.

I will be away from the microphone. I think if I speak loudly.

CHAIRMAN DUNN: Speak loudly. And if anybody in the back can't hear him, just raise your hand and I'll take note.

MR. BIBB: As I said, my artistic value for the State of California is a resemblance only for discussion.

The reason for C66, which is nothing more than a nomenclature given to our data base so it identifies this as a taking away of capacity, was to relieve congestion on Path 15. That was the driving factor of C66.

C66, and again, this Committee now knows, there's three lines that connect us with the Pacific Northwest. C66 was imposed on these three lines that make up the COI in a north-bound direction only.

MR. ROBINSON: California-Oregon Intertie.

MR. BIBB: The California-Oregon Intertie.

At the time of this, we were in the midst of very limited supplies for various reasons. We had looked at, on December 30th, going into the new year, what it is that we had to do to unload Path 15.

Remember, we were in somewhat of a -- I won't call it a drought -- but a light water year we were just coming out of. The Northwest was in a light water year at the same time.

So, what we had looked at was, we were depleting our Northern California hydro supplies. They were getting very low at the end of December. The rain season predictions were for a light winter for 2000-2001.

We were also exceeding or starting to, at the end of 2000, we had maximized in some units all of our air credits in the run times on the combustion turbines in the northern part of the state.

So, looking forward, we were considering run

times that we were going to have use in the northern part of the state to keep Path 15 unloaded based upon what had been previously happening here for the last several months.

And, of course, air credits. Those were some of the low imports from the Northwest because of the hydro situation going on there.

At the time, the load-versus-generation was out of balance in Northern California. There was more load than there was generation available at the time.

At this time also we were -- had delayed much -- many of the maintenance on the generators in the beginning of the energy crisis to keep them on line as much as possible. We had delayed two to three months some of those units. Many -- some of those units were having additional air resource hardware installed as they would meet the new air standards that were being put onto them in the early part of 2001.

So, we had more load than generation in the north. And of course in the south we had less load and more

19 generation. That's the situation, what was going on at this
20 time.

21 The other thing at Path 15, there's several
22 different parties competing for Path 15. One is the California
23 ISO and those entities within California to deliver power from
24 the South to the North for ISO use. There's also those who want
25 to import energy from the South and the Southwest and deliver it
26 up to the Northwest. So, you have two -- two competing parties
27 here.

28 The question came up, why not impose it on Path
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01 15? The way the market works is, we post these values the day
02 before the day-ahead market runs, or two days in front of the
03 operating day so that everybody has visibility of what's
04 available to go on. By -- had we used Path 15 as the CBM or the
05 restriction, then in the day-ahead markets, we would have
06 restricted the amount of power scheduled to the NPR, the
07 northern part of California.

08 We looked to the north. When we got to COI, we
09 looked at imposing a restriction going north, keeping Path 15
10 fully open for scheduling in the day-ahead and the hour-ahead
11 markets, allow all of the resources to schedule as much as we
12 could to the north, here.

13 The other way that scheduled power to the north
14 of California, Northern California, I'll just -- is the Pacific
15 DC Intertie. That's another way that we can bring power. We
16 would bring power up north on the DC, and then back down through
17 the COI, which was not congested at the time. The only
18 congestion that we had going was the Path 66 or the COI Intertie
19 between northwestern California in the north bound direction.

20 So, at Path 15, loading was -- we were having all
21 the problem with Path 15. Hydro was getting low. Our run
22 times, our air credits were being consumed because we're running
23 the generation so heavily. Plus, we had another 1300 megawatts
24 of generation coming off that had to be taken for installation
25 of air devices for new -- to meet new air standards.

26 Looking at that happening in 2001, and knowing
27 that if we couldn't keep Path 15 unloaded, if we ran all of our
28 hydro out, used up most of our run time and our air credits in

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01 early of 2001, come summer of 2001, the hydro would, you know,
02 be less than what we would normally have. The run times would
03 be approaching their levels of their limits, and the air credits
04 would be deleted before the end of the year of 2001. That was
05 our reasoning.

06 So, we imposed a restriction in the northbound
07 direction to Path 15, unloaded to get as much resources into
08 MT-15 as possible.

09 At no time was the -- or was this C66 imposed to
10 stop any type of laundering. That was never the intention or
11 the discussion.

12 Questions.

13 CHAIRMAN DUNN: Have you finished at the board?
14 If you are, we'll bring you back down here. It'll be easier for
15 everybody as far as hearing and so forth.

16 Chris.

17 MR. SCHREIBER: I guess I would just say that
18 that runs counter to the explanation I was initially given.

19 If that's changed, that's fine. But megawatt
20 laundering was cited to me as one of the reasons, or the reason,
21 why the flow of power north needed to be stopped.

22 SENATOR MORROW: By whom?

23 MR. SCHREIBER: In my last conference call with
24 the ISO on this matter.

25 SENATOR MORROW: With whom?

26 MR. SCHREIBER: Yeah, it would be with a team of
 27 operators and legal counsel there.
 28 And I said, why are we trying to stem the flow of
 0093 megawatts outside the state? And I was told, well, megawatts
 01 were leaving the state because of megawatt laundering.
 02 SENATOR MORROW: I take it nobody that's sitting
 03 at the table when you were having this conversation --
 04 CHAIRMAN DUNN: Sitting at the table?
 05 MR. ROBINSON: I'm not familiar with this
 06 conversation.
 07 MR. BIBB: There was one meeting that I was in.
 08 Was I present at that meeting on the phone? This was several
 09 months back.
 10 CHAIRMAN DUNN: Now we are to the point where we
 11 have to name names.
 12 MR. SCHREIBER: This was in October. I believe
 13 it was October 26th, or thereabouts, of 2002. It was a
 14 conference call in which the revelation was made -- Dr.
 15 Hildebrandt was actually on the call and actually finally
 16 explained what took place.
 17 There was a whole host of people from the ISO on
 18 the call as well.
 19 And Robert was on the call, Robert McCullough.
 20 John, I don't think you were on the call when it was finally
 21 discovered.
 22 But the question was posed, why are we limiting
 23 -- you know, once we discovered that what CBM was, and that the
 24 available transmission capacity had been limited leaving the
 25 state, the flow of megawatts out of the state because of
 26 ricochet or megawatt laundering was specifically cited.
 27 SENATOR MORROW: I'm sorry. Who from the ISO was
 0094 on the call?
 01 MR. SCHREIBER: I know Dr. Hildebrandt was, Beth
 02 Ann, you were on the call, Beth Ann Burns from their legal team,
 03 and Tracy.
 04 MR. BIBB: Okay, I guess I was -- that was the
 05 conversation I was in also.
 06 MR. SCHREIBER: I make no representation that
 07 it's accurate, you know, that the reason is accurate. But that
 08 was the representation that was made in the call.
 09 If it's changed, that's fine.
 10 CHAIRMAN DUNN: Other questions?
 11 SENATOR MORROW: I'm baffled.
 12 MR. BIBB: Maybe I could explain a little bit
 13 more.
 14 At that time in the state we also were monitoring
 15 the schedules coming south. I've heard comments made today
 16 about the exchange energy and such, that that may have hampered
 17 that. I don't -- from what we looked at as we monitored
 18 schedules coming back into California from the Northwest, the
 19 numbers when you look at them didn't change a whole lot from
 20 previous levels before C66. So, I'm not sure what the exchange
 21 part is all about.
 22 I know there are exchange contracts. Those are --
 23 the ones that I'm familiar with are seasonal. We ship power to
 24 Bonneville in the winter, some winter months, and they send it
 25 back. I don't know if those are still in force or not, but they
 26 were at one point.
 27 So, other than some short-term power deals that
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 01 may have been made to do some exchange energy, those may have
 02 been done by maybe people with existing contracts even on the
 03 COI, because by implementing the CBM as we -- the term that we

04 use, for Path 15, the argument, you know, could be made that
05 maybe a TRM was more appropriate. We would have done the same
06 thing had we called it a TRM, or had we called it --

07 SENATOR MORROW: Explanation of TRM?

08 MR. BIBB: I'm sorry. A TRM, a Transmission
09 Reliability Margin is also another term and another tool that
10 NERC and WECC has for utilities to take care of transfer or
11 reliability issues on their system that they cannot deal with in
12 a normal manner. Obviously, this would be one of those cases.
13 We discussed, should it be a TRM, should it be a
14 CBM, or should we just call it Dispatch Protocol 6.9.1 out of
15 our tariff. It didn't matter what we called it. The amount of
16 megawatts applied on the taking away from the capacity would
17 have stayed the same.

18 So, it's been sometime has passed, but CBM was
19 the nomenclature elected because we were reserving or trying to
20 make capacity for our benefit for Northern California.

21 MR. ROBINSON: And I just wanted to make sure
22 that the Committee had in front of it the dispatch protocol that
23 we've cited. I believe it is quoted in the report prepared by
24 McCullough Research. It's on the fourth page of the McCullough
25 report. It is Dispatch Protocol 6.9.1 which does allow the ISO
26 to impose transfer limitations to relieve grid congestion,
27 mitigate potential overloads, or eliminate operation outside of
28 existing nomogram criteria.

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01 To summarize, I believe what Mr. Bibb has
02 indicated is that we imposed the limitation on Path 66 in order
03 to relieve anticipated congestion on Path 15, and potential
04 overloads on that path.

05 So, we do believe that it falls within the
06 dispatch protocol, which, as I indicated before, was a part of
07 the ISO tariff from startup.

08 CHAIRMAN DUNN: Tracy, I'm assuming you were the
09 main contact person within ISO that orchestrated the C66 issue.
10 Was that a fair description?

11 MR. BIBB: I think I was part of, you know, a lot
12 of discussions that went on as to how to unload Path 15 in the
13 long run, and not use up and deplete resources so that they
14 wouldn't be available in the summer.

15 But that was -- to say, you know, who always
16 engaged in those kinds of discussions. It was in a director
17 level; myself, as Director of Scheduling, the Director of
18 Operations, Market Operations, a variety of people were involved
19 with wanting to find out, you know, how do we relieve Path 15
20 from overloading.

21 And I may add, there is one other way to relieve
22 Path 15 from overloads, and that's through voluntary or
23 involuntary load reduction, and that was the last thing we
24 wanted to do.

25 CHAIRMAN DUNN: Even though there was a team of
26 folks you have just identified, Chris, let me pose the question
27 to you anyways.

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The response from the market participants, when
01 they had a full realization of what had occurred, was pretty
02 extraordinary. I mean, obviously Morgan Stanley initiates
03 action over it. Charlie, you even mentioned before, there are
04 numerous intervenors in that particular action. They obviously
05 were not pleased by what had occurred.

06 Charlie, you said recently the Morgan Stanley
07 action had been withdrawn.

08 MR. ROBINSON: Correct.

09 CHAIRMAN DUNN: What's recently?

10 MR. ROBINSON: December of 2002.

11 CHAIRMAN DUNN: So about a month ago, within a
12 month or so.
13 MR. ROBINSON: Yes.
14 CHAIRMAN DUNN: So, that litigation went on for
15 approximately a year-and-a-half.
16 MR. ROBINSON: Correct.
17 CHAIRMAN DUNN: Why do you think, Tracy -- and I
18 know we're speculating; you're not the market participants --
19 why do you think their response was so vehement when they had a
20 full realization of what had occurred by mid '01?
21 MR. BIBB: I believe they wanted access to the
22 Northwest. And that's the only thing I can come up with.
23 CHAIRMAN DUNN: Charlie, any thoughts?
24 MR. ROBINSON: None further than that.
25 MR. SCHREIBER: Mr. Chair, I would propose this
26 to you as well, because I don't know answer to that, but I think
27 part of the reason for their reaction might be because it was
28 unusual for this practice, for CBM to have been invoked on an
0098 export power line as opposed to an import power line.
01 I mean, the more customary utility practice would
02 have been to invoke the protocol on the import side of the
03 business, not the export side. And though there's no
04 distinction made in the tariff, 6.9.1, between import and
05 export, I think it was the view of Enron in those memos, and
06 others that we've spoken to that the -- that it was a legal
07 stretch to extend the protocol to an import.
08 And I don't make any claim that that's a legal
09 argument.
10 CHAIRMAN DUNN: Charlie, let me go to the
11 settlement for a moment.
12 Again, just taking your words in your opening
13 comments that once there was a dialogue established and a fuller
14 understanding from ISO's perspective by Morgan Stanley and
15 others, that action was withdrawn.
16 A year-and-a-half is a long time to litigate
17 something over a misunderstanding. Can you give us more
18 specifics about what was it that culminated in the settlement or
19 withdrawal of the action by Morgan Stanley with the various
20 intervenors?
21 MR. ROBINSON: I really can't. I was not the
22 attorney at the ISO who managed the litigation on day-to-day
23 basis. It was handled by our outside attorneys, and someone in
24 my department oversaw the day-to-day responsibilities.
25 CHAIRMAN DUNN: Which outside firm handled it?
26 MR. ROBINSON: The Swidler Berlin firm.
27 CHAIRMAN DUNN: My favorite.
0099 MR. ROBINSON: By the way, I'm not sure it's that
01 unusual for litigation to last a while at FERC.
02 CHAIRMAN DUNN: I understand that, but I'm not so
03 sure Morgan Stanley wanted to continue to pay their outside
04 counsel over a mere misunderstanding, Charlie, to be perfectly
05 honest with you.
06 Other comments from ISO on the C66?
07 MR. BIBB: I think my last comment would be that
08 starting in April, I don't know the exact timeframe, but it was
09 late spring, I believe, the CBM was reduced on a daily basis in
10 the forward markets. And more transmission was released to new
11 firm use as new generation got on line. Generators returned
12 from their overhaul maintenance schedules, and the winter -- the
13 water situation was starting to improve somewhat, and Path 15
14 overloads were becoming less frequent.
15 We then started -- and again, I believe it was
16 around the April timeframe -- where we started releasing

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18 additional transmission for use by the market participants.
19 CHAIRMAN DUNN: Okay, all right.
20 Other comments? Mr. Drivon?
21 Bear in mind that I am being called.
22 MR. DRIVON: When C66 was being used, if somebody
23 didn't understand the source of the transmission withdrawal,
24 would that appear to the market as congestion on that line?
25 MR. BIBB: On our Oasis, it would be posted as
26 zero -- or new firm use availability.
27 MR. DRIVON: Congestion would be the same way;
28 wouldn't it?
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01 MR. BIBB: Well, congestion occurs after people
02 start to use the line.
03 MR. DRIVON: Or they could not use it because
04 somebody said it was already full.
05 MR. BIBB: That's right. And purpose for putting
06 the zero new firm use during that period was not to have -- to
07 give a clear signal to the markets that this line was not
08 available in the south to north direction.
09 MR. DRIVON: So, they didn't need to try to use
10 it to find out it wasn't available. You told them ahead of
11 time; right?
12 MR. ROBINSON: That's right. So, I don't think
13 there was confusion about whether it was congestion. They were
14 advised in advance what the transfer limitation capabilities of
15 that line were, and what the restrictions were. And I don't
16 believe they would have thought that it was congestion due to
17 market use.
18 MR. DRIVON: And so, if they tried to schedule
19 into that line then, nobody was going to be paid any congestion
20 mitigation money?
21 MR. DETMERS: That really depends on what the
22 total schedules are that you're seeing, and what direction those
23 schedules are actually occurring.
24 MR. DRIVON: Well, if that line is said to be
25 full, and I wanted to schedule into that line, could I create a
26 situation in which there would be congestion created that would
27 be paid for by somebody?
28 MR. DETMERS: You could definitely create
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01 congestion at that point, and it would have to be paid for by
02 those who are scheduling or utilizing that facility.
03 MR. ROBINSON: In the same way as if there were
04 no transfer limitation on the line, people can schedule more
05 than the rated capacity of the line.
06 MR. DRIVON: And there's a rumor that that
07 happened.
08 MR. ROBINSON: There is indeed.
09 MR. DRIVON: And I think you said that the
10 justification for C66 was light water in the Northwest and
11 Northern California affecting hydro availability, at least
12 perspective, and generation capacity restrictions due to, for
13 instance, run time problems and air credit.
14 Is that right?
15 MR. BIBB: That, coupled with the fact that the
16 Path 15 was being -- or wanted to be used by a lot of different
17 entities for different purposes, some for serving load in
18 Northern California, some for transporting outside of
19 California.
20 MR. DRIVON: What part of your forecasting
21 involved your consideration of physical withholding that I
22 think, if I remember correctly, Mr. Detmers talked about had
23 occurred during the second half of 2000?
24 I mean, I think we've had testimony here at the

25 Committee, and I think by Mr. Detmers, that the ISO had
 26 identified physical withholding on the part of a number of
 27 generators during the second half of 2000.
 28 What part of your thinking concerning your
 0102 forecast did that consider?
 02 MR. DETMERS: I don't know if that was a part of
 03 any of our determination to impose the CBM, or what we term as
 04 the CBM
 05 MR. DRIVON: Well, it just seemed to me that if
 06 you were looking at a situation where there was short supply
 07 over the past six months, and you ascribe light water in the
 08 Northwest and Northern California. Therefore, less available
 09 hydro forecast, generation capacity restrictions due to run time
 10 and air credits, and et cetera, that if you had already
 11 identified that there had been significant withholding, that if
 12 that could have been corrected, that might have obviated the
 13 necessity to forecast these kinds of shortages into 2001.
 14 MR. DETMERS: If that had been determined.
 15 But what I'm saying is, I don't know that we were
 16 drawing those conclusions at that time when we were making the
 17 decisions to impose that.
 18 MR. DRIVON: I thought that that had been your
 19 testimony here. That in the time leading up to the December 8th
 20 FERC filing to eliminate the hard caps, that you were sweating
 21 bullets down there because you didn't have enough electricity to
 22 go around. And in looking at it, it was your determination that
 23 it was probably substantially due to physical withholding.
 24 Isn't that what you testified to?
 25 MR. DETMERS: I am not sure exactly what that
 26 testimony was.
 27 We do know that -- that we did have a shortage of
 28 supply, and a lack of people wanting to do business with the
 0103 ISO or sell to the ISO.
 02 And so, from that standpoint, we did have a
 03 shortage condition which -- I don't know if the terms were used
 04 as a physical withholding.
 05 MR. ROBINSON: I did want to point out that we
 06 were addressing the physical withholding point in other arenas.
 07 You may recall that we requested that the
 08 Secretary of Energy give us an order that allowed us to force
 09 generators, both inside and outside the state, to continue
 10 supplying California. After those orders expired, the ISO went
 11 into court and obtain a federal court injunction to keep people
 12 generating and delivering to California.
 13 So, we did address the issue of physical
 14 withholding until we were turned back by the Court of
 15 Appeals.
 16 MR. DRIVON: I know you did a lot to try to
 17 address that particular problem.
 18 As a matter of fact, I think I remember reading
 19 Mr. Detmers' declaration in support of the FERC -- of the
 20 application to FERC to eliminate the hard price caps, talking
 21 about the fact that there was physical withholding. I think
 22 that was actually part of a sworn declaration.
 23 What I'm wondering is, if physical withholding
 24 had affected the availability of power, why didn't that figure
 25 into the calculations concerning these forecasts going forward
 26 that you use now to justify C66?
 27 MR. DETMERS: What I'm saying is, my mind's not
 28 as good as two years ago when those events all occurred. So, I
 0104 don't -- I don't know that I can recall that. We can go back to
 02 the documents and they speak for themselves.

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CHAIRMAN DUNN: Larry, one more question and we've got a certain President Pro Tem.

MR. DRIVON: In the face of the President Pro Tem.

CHAIRMAN DUNN: His level of patience is notorious. I think I don't need to say anything further.

Charlie, unfortunately because of time, and I know there are other folks from ISO, and I know from CERS are here as well, too, and we have not reached that point yet. I've just conferred with Senator Morrow.

Because Floor Session, et cetera, we're not going to be able to bring everybody back later today. We want to complete these issues, both this one, and I know Mr. Drivon and others have some wrap-up questions, to do so, and also touch upon the fictitious load, the issue of Perot Systems, et cetera, that are on the agenda, MD02. And I know on MD02, we've got some timelines as well. So, we're going to reschedule as quickly as possible.

Please accept my humble apologies, Zora in particular, because I know you've been here a long time. We will work with everybody's schedule to make it as convenient as possible, since everybody cleared their schedule to get here, and now we've got to come to an end.

So, again, my humble apologies. I thank everybody for being here as long as you have already today. We'll reschedule with everybody's schedule.

Unless there's anything further, a certain Senator is calling, and we're adjourned.

[Thereupon this portion of the Senate Select Committee hearing was terminated at approximately. 1:45 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the hearing of the Senate Select Committee to Investigate Price Manipulation on the Wholesale Energy Market was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2003.

EVELYN J. MIZAK
Shorthand Reporter